

**JENA 6 AND THE ROLE OF FEDERAL INTERVEN-  
TION IN HATE CRIMES AND RACE-RELATED  
VIOLENCE IN PUBLIC SCHOOLS**

---

**HEARING**

BEFORE THE

**COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES**

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

---

OCTOBER 16, 2007

---

**Serial No. 110-162**

---

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://judiciary.house.gov>

---

U.S. GOVERNMENT PRINTING OFFICE

38-334 PDF

WASHINGTON : 2009

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

## COMMITTEE ON THE JUDICIARY

JOHN CONYERS, JR., Michigan, *Chairman*

HOWARD L. BERMAN, California	LAMAR SMITH, Texas
RICK BOUCHER, Virginia	F. JAMES SENSENBRENNER, JR., Wisconsin
JERROLD NADLER, New York	HOWARD COBLE, North Carolina
ROBERT C. "BOBBY" SCOTT, Virginia	ELTON GALLEGLY, California
MELVIN L. WATT, North Carolina	BOB GOODLATTE, Virginia
ZOE LOFGREN, California	STEVE CHABOT, Ohio
SHEILA JACKSON LEE, Texas	DANIEL E. LUNGREN, California
MAXINE WATERS, California	CHRIS CANNON, Utah
WILLIAM D. DELAHUNT, Massachusetts	RIC KELLER, Florida
ROBERT WEXLER, Florida	DARRELL ISSA, California
LINDA T. SANCHEZ, California	MIKE PENCE, Indiana
STEVE COHEN, Tennessee	J. RANDY FORBES, Virginia
HANK JOHNSON, Georgia	STEVE KING, Iowa
BETTY SUTTON, Ohio	TOM FEENEY, Florida
LUIS V. GUTIERREZ, Illinois	TRENT FRANKS, Arizona
BRAD SHERMAN, California	LOUIE GOHMERT, Texas
TAMMY BALDWIN, Wisconsin	JIM JORDAN, Ohio
ANTHONY D. WEINER, New York	
ADAM B. SCHIFF, California	
ARTUR DAVIS, Alabama	
DEBBIE WASSERMAN SCHULTZ, Florida	
KEITH ELLISON, Minnesota	

PERRY APELBAUM, *Staff Director and Chief Counsel*

JOSEPH GIBSON, *Minority Chief Counsel*

# CONTENTS

OCTOBER 16, 2007

Page

## OPENING STATEMENTS

The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Chairman, Committee on the Judiciary .....	1
The Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Ranking Member, Committee on the Judiciary .....	2
The Honorable Robert C. "Bobby" Scott, a Representative in Congress from the State of Virginia, and Member, Committee on the Judiciary .....	3
The Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Member, Committee on the Judiciary .....	4
The Honorable Maxine Waters, a Representative in Congress from the State of California, and Member, Committee on the Judiciary .....	5

## WITNESSES

Mr. Donald Washington, U.S. Attorney for the Western District of Louisiana, U.S. Department of Justice, accompanied by Lisa Krigsten, Counsel to the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, and George Henderson, General Counsel, Community Relations Service, U.S. Department of Justice .....	7
Oral Testimony .....	7
Prepared Statement .....	10
Mr. J. Richard Cohen, President and CEO, Southern Poverty Law Center .....	19
Oral Testimony .....	19
Prepared Statement .....	21
Reverend Brian L. Moran, Pastor of the Jena Antioch Baptist Church and President of the NAACP Jena Chapter .....	24
Oral Testimony .....	24
Prepared Statement .....	25
Charles J. Ogletree, Jr., Director, The Charles Hamilton Houston Institute for Race and Justice, Harvard Law School .....	26
Oral Testimony .....	26
Prepared Statement .....	28
Reverend Al Sharpton, President, National Action Network .....	40
Oral Testimony .....	40
Prepared Statement .....	41

## MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Member, Committee on the Judiciary .....	85
Prepared Statement of the Honorable Steve Cohen, a Representative in Congress from the State of Tennessee, and Member, Committee on the Judiciary .....	89
Prepared Statement of the Honorable Betty Sutton, a Representative in Congress from the State of Ohio, and Member, Committee on the Judiciary .....	89
Articles submitted by the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Member, Committee on the Judiciary .....	91

# IV

	Page
Material submitted by Charles J. Ogletree, Jr., Director, The Charles Hamilton Houston Institute for Race and Justice, Harvard Law School .....	98
Prepared Statement of the Anti-Defamation League .....	137
Post-Hearing Questions submitted by the Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Ranking Member, Committee on the Judiciary .....	154

## **JENA 6 AND THE ROLE OF FEDERAL INTERVENTION IN HATE CRIMES AND RACE-RELATED VIOLENCE IN PUBLIC SCHOOLS**

**TUESDAY, OCTOBER 16, 2007**

*House of Representatives,*  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 9:53 a.m., in room 2141, Rayburn House Office Building, the Honorable John Conyers, Jr. (Chairman of the Committee) presiding.

Present: Representatives Conyers, Berman, Nadler, Scott, Watt, Jackson Lee, Waters, Sánchez, Cohen, Johnson, Sutton, Baldwin, Weiner, Schiff, Wasserman Schultz, Ellison, Smith, Sensenbrenner, Coble, Goodlatte, Lungren, Issa, King and Jordan.

Staff Present: Lillian German, Majority Deputy Oversight Counsel; Kanya Bennett, Majority Counsel; Paul Taylor, Minority Counsel; and Renata Strause, Majority Staff Assistant.

Mr. CONYERS. This is very disturbing because none of the mikes are working.

This is an historic hearing in which the microphones are working at the House Judiciary Committee. Good morning, again, everyone. This is an important hearing, in my judgment, one of the most important that I've had the honor of chairing, because what this is about, is about democracy now and how do we improve it.

We thank, first of all, all the Members that are able to join the hearing on the Committee. And then we thank the important and distinguished witnesses that we have before us. And we also thank everyone here who is attending the hearings in person as our guests.

The Jena 6 and the role of the Federal intervention in hate crimes in race-related violence in public schools is a very timely and important matter. I thank all of you who have come from various parts of the country to help discuss and illuminate this critical issue in terms of how we can resolve and solve it. Today's hearing addresses a question that has unfortunately been historically a stain on our Nation's history of race relations, namely racial violence and hate crimes.

Also disturbing is the likelihood that what happened in Jena, Louisiana, not might have garnered any public awareness and would not have inspired one of the largest civil rights protests in recent memory were it not for the activity of so many citizens and

even persons in the media who brought this to public, national and international consideration.

Clearly, in Jena, there were numerous missed opportunities to address some of these incidents in a fair manner. It could have been treated as a disciplinary problem to be addressed by the school principal, as to all the students involved of all races, or in a more effective and efficient and fair manner.

As we all know, it is illegal under the guarantees of our Constitution and our laws to have one standard of justice for White citizens and another harsher one for African American citizens. And so I met with the Department of Justice officials about the matter, and to their credit, they are eager to examine these problems presented in the case and committed to sharing with this Committee their findings concerning other incidents.

Racial discrimination in the criminal justice system is not unique to any one place, but is found in cities and towns, north and south, throughout our Nation. Our Committee, for example, is examining similar incidents involving the prosecution of African American juveniles in Georgia, Texas and California.

And on that note, I point out that some school leaders at Jena High School did attempt to treat this matter with equity and justice; they were overruled. There are countless justice-minded individuals in Jena and throughout this country who are disturbed about this, and I quote Dr. Martin Luther King, Jr., a great influence in my political development who wrote, "Injustice anywhere is a threat to justice everywhere."

And so we come to this hearing inquiring as to how we can correct this situation in the Nation, and I'm looking forward to this discussion. And I want to particularly thank the Members of this Committee, but especially Lamar Smith, the Ranking Member from Texas with whom we have worked continually in this matter. And it's not like this is the end of the line or anything. This is—the development of democracy is a continuing activity; it never stops. There will always be problems.

The question in my mind today is whether from the particular experience and incident that brings us here, we can move forward, that we can build on it. And it's in that confidence that I believe that the answer is absolutely yes, that we're all invited to gather here today.

And so I'd now like to recognize the Ranking Member of Judiciary Committee, Lamar Smith.

Mr. SMITH. Thank you, Mr. Chairman, and thank you for those always gracious and always generous words.

Jena, Louisiana has suffered through a tragic series of racial incidents and subsequent racial strife. I sincerely hope this hearing will focus on productive solutions.

And in that regard, Mr. Chairman, let me say that in reading the testimony of our witnesses today, I was gratified to see so many suggestions for how we might reach those healing solutions.

The title of this hearing uses the term hate crimes, but the proposed Federal hate crimes legislation would only criminalize those incidents that are accompanied by acts of violence. If current laws are insufficient to cover certain crimes, then we need to consider changing them.

Mr. Chairman, more than anything, though, what we need is an effort to reduce racial tension and discrimination; what we do not need is stoking racial resentment. Race under the criminal law cannot be allowed to act like the laws of magnetism, inevitably pulling society's compass to point one way or another based on the color of one's skin. If justice is blind, she must be color blind as well.

Mr. Chairman, this is an historic hearing today as you've already said, and I think much good can come out of it. And I have great faith in our witnesses today, not only to testify as to solutions they think are appropriate, but also to take steps today to begin that healing process as we all work together toward that goal.

And with that, Mr. Chairman, I yield back.

Mr. CONYERS. I thank the gentleman very much, and I'd like now to turn to the Chairman of the Subcommittee on Crime, Bobby Scott of Virginia, and recognize him.

Mr. SCOTT. Thank you. Thank you, Mr. Chairman, thank you for holding today's important hearing. I'm sure we're all familiar with the alleged facts, the Black students at Jena High School asked to sit under a tree that was understood by everyone, including school administrators, to be for White students only. Three White students hung nooses from the tree and were ultimately punished with a brief suspension. Fights subsequently occurred between Blacks and Whites, but only Black students have been charged with serious crimes.

The facts in these cases will ultimately be determined in court. But many of the allegations have not been credibly contradicted. If they are true, I'd like the Department of Justice to comment on the availability of Sections 1983 and 1985 as possible remedies for the injustices. Unfortunately, whatever the facts of this case may be, we do know that this cycle, the incarceration of African American males, is something that we see over and over again in this country.

As unfortunate as the Jena 6 case may be, this is just an example of the misfortune that African American males are experiencing in the criminal justice system. Marcus Dixon in Georgia, an 18-year-old African American male had consensual sex with a 15-year-old, was convicted of statutory rape and aggravated child molestation, served 14 months of a 10-year sentence before the Georgia Supreme Court threw out his conviction. Genarlow Wilson, a 17-year-old African American male was convicted and sentenced to 10 years for having consensual sex with a 15-year-old. Wilson is now 21, still in prison and waiting for the Georgia Supreme Court to make a decision in this case. Cases such as these are unfortunate, but I personally do not know of any case in which a nonminority child was sentenced to a long prison term for engaging in consensual sex with a peer.

African American families live with grim realities facing their children at the present rate. One-third of African American males born today will end up in prison. African American males are incarcerated at nearly 6 times the rate of Whites, and there are racial disparities at every stage of the criminal justice system, especially the juvenile justice system, creating what the Children's De-

fense Fund called the cradle-to-prison pipeline for African American males.

We have to ask the Department of Justice what can be done from a Federal perspective to address local practices which perpetuate the cradle-to-prison pipeline and ask why programs which have been proven to reduce crime and are cost-effective are not put into practice. We need to be assured that the Department of Justice is working to close the disparities between African Americans and Whites in our criminal justice system. And we also need comments from the Department on several pending anti-gang bills and the effect these bills may have on racial disparity. It is important for the Department to prove to future generations that the term justice for all is not simple rhetoric.

I would like to thank our witnesses for being with us today and look forward to their testimony. I thank you, Mr. Chairman, and I yield back.

Mr. CONYERS. Thank you, Chairman Scott.

By previous arrangement and agreement with the Ranking Member—two of our Members of this Committee have been to Jena, and I now recognize Sheila Jackson Lee of Texas for her comments.

Ms. JACKSON LEE. Mr. Chairman, first of all let me acknowledge my appreciation for the Judiciary Committee and your chairmanship. And let me as well acknowledge the Congressional Black Caucus, Chairwoman Kilpatrick and, of course, the main Member of Congress, or the Member of Congress from Louisiana, which I know they will be acknowledged.

All of us as parents have aspirations and dreams for our children. And I might imagine that the Jena, Louisiana, students had parents, grandparents who loved them and had the same dreams. We're reminded of the history of the civil rights movement, at least from the '50's and '60's, and I would listen to older African Americans who took great pain in thanking the Federal Government for being their refuge. As Martin King languished in jail, President John F. Kennedy called him; whatever the politics of it, he called. As the Little Rock 9 was frustrated, President Eisenhower responded.

The tragedy of this case is that it called out for Federal intervention and the protection of children whose parents had enormous hopes and dreams. One young man was on his way to achieving graduation and then going on to college with football scholarships.

I hold in my hand the chronicling of the series of events. The question becomes, when community, when civil rights leaders like Reverend Al Sharpton, Reverend Jesse Jackson, Martin Luther King, III, begged for Federal intervention, where was it? When hanging nooses became a major incident, where was the Federal Government? Where was the question being asked regarding civil rights?

We do have a hate crimes initiative, not initiative but law, in Louisiana. That could be what you hid behind, because hanging nooses is not listed, obviously a weak law. Burning crosses obviously represented intimidation, so do hanging nooses. And so my questions today will be focused pointedly about the failure of this government to protect.



Let me thank Michael Baisden, Tom Joyner, Steve Harvey, and Joe Madison for their work. Let me thank Louis G. Scott, Carol Powell Lexing for their work, struggling in the frustration of the inertia of this failed Civil Rights Division of the Federal Government of the United States. Shame on you. Because I believe that we have always looked to the Federal Government for the refuge and saving of those who have been discriminated against. And this time, and times through the past couple of years, there have been no response. I look forward to your responses, and certainly I look forward to solutions to save Mychal Bell and the Jena 6. I thank you, and I yield back.

Mr. CONYERS. Thank you so much. I'd like now to turn to the gentlelady from California and long-serving Member of this Committee, Maxine Waters.

Ms. WATERS. Thank you very much, Mr. Chairman. Let me first thank you for holding this hearing. It is unusual that we can get hearings calendared as quickly as this was done, and we were only able to do this because you are the Chair of this Committee. And if we had to have a hearing at this time about this issue, there could be no better person than you, whose life has been dedicated to civil rights in this country, so I am very pleased that you are at the helm and you are leading this hearing today.

Yes, Mr. Chairman, I did travel to Jena, and I traveled to Jena because this particular Jena 6 case triggered in me a sign of danger. I had the same feeling when this became known, what was going on there, that I had when we experienced the Rodney King beating in Los Angeles; the same feeling when we watched the people outside of the Convention Center in New Orleans after Katrina; the same feeling as we witnessed what happened in the Town of Tulia, Texas, when the whole town practically was indicted on false charges.

There are certain cases that you know must be dealt with because if you do not deal with them, not only is great harm going to come to the individuals involved, but a message is being sent that this is what can happen if the public policy makers, the civil rights leaders and others are not paying attention. If you don't move at the particular time that these cases raise their ugly heads, then what you're going to see is a proliferation, because prosecutors and DAs who abuse their power will think that they can get away with doing that and nothing will happen.

And so I went to Jena to join with all of the thousands, maybe 50,000 other folks who went there, to send a message that we are here, that something wrong has happened here; we are not going to allow it to continue without addressing it. And so today is part of the response to that issue.

I am concerned, Mr. Chairman, about several things related to this case. Number 1, what is the responsibility of the school and the school administrators in handling racial incidents, not only in the south but anywhere in this country? I am concerned about the equal punishment argument. I am concerned about why it appears in this case young Black men were treated more harshly than the Whites. I am concerned about why many cases that occur in the schools are now ending up in the criminal justice system, this is not the only one that we are experiencing. More and more we are

hearing about kindergarten children in handcuffs being taken to jail. We are hearing about teenagers being taken out of school and taken into jail, and we really do have to figure out the responsibility of the school system and why the criminal justice system is getting involved.

We also have to be concerned about the unbridled power of DAs and prosecutors. And in this case, we must very well be concerned about DA Reed Walters when he addressed the Jena High School students in an assembly last fall and the reported statement that—that if the protests at the school do not stop, with the stroke of my pen, I can make your lives disappear. And he almost did that. And those lives of those six would have disappeared had the Nation not gotten involved.

I am concerned about towns where you have total all White power, where everybody in the town in a power position is White. And you have the young Black folks, young Black males in particular, who are going up against district attorneys, the juries, all White without any Blacks being involved. And I am concerned about the admission of hate crimes, and now not only the nooses that were hung over the tree on the high school campus, but now nooses that are showing up all over the country in some kind of effort to send a message. We have a response from the U.S. Department of Justice that we have contacted, and they said they are investigating causes now in Maryland, New York, North Carolina, Pennsylvania and other places that we are hearing about. So I suspect—

Mr. CONYERS. Okay.

Ms. WATERS [continuing]. That despite the fact that we thought we had addressed the civil rights issues, we have to start all over again, Mr. Chairman, and I appreciate your leadership. I yield back.

Mr. CONYERS. I thank you very much. And I know other Members would like to make opening statements, but we're going to incorporate them into the record.

I wanted to make it clear to everyone that the prosecutor of La Salle Parish, Louisiana, Mr. Reed Walters, was invited, but he declined to be present, and I wanted the record to note that.

And one the very important goals of the Committee is to determine what is the current state of the law both in Louisiana and in the Federal Government. Amazingly enough, this is not a simple elementary consideration of existing law; it gives us a large responsibility to determine what the law is. And then, of course, what always follows up after you establish what the law is, is how is it being enforced? And so it's in that spirit that we begin today.

And our first witness—in a way the first two witnesses—is the counsel to the Assistant Attorney General for Civil Rights of the United States Department of Justice, Ms. Lisa Krigsten, a former prosecutor, a former trial attorney in the criminal section of the Civil Rights Division.

And we welcome you Ms. Krigsten.

Our second witness is the United States Attorney for the Western District of Louisiana, Donald Washington, who has served there for 7 years. In addition to his significant experience as a

practicing attorney, he is a former commission officer in the United States Army.

And we welcome you, Mr. Washington.

We've met before in preparation for this day. And we're going to include your statement and everybody else's in the record. And I understand that you and Ms. Krigsten have a single statement that you will bring forward, but she will be available for questions.

Welcome and please begin.

**TESTIMONY OF DONALD WASHINGTON, U.S. ATTORNEY FOR THE WESTERN DISTRICT OF LOUISIANA, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY LISA KRIGSTEN, COUNSEL TO THE ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE, AND GEORGE HENDERSON, GENERAL COUNSEL, COMMUNITY RELATIONS SERVICE, U.S. DEPARTMENT OF JUSTICE**

Mr. WASHINGTON. Thank you. Thank you, Mr. Chairman. Mr. Chairman, Mr. Ranking Member and Members of the Committee, thank you for this opportunity to describe the Justice Department's efforts in addressing recent events in Jena, Louisiana. I am joined today by Ms. Lisa Krigsten, a prosecutor from the Civil Rights Division, who is currently serving as counsel to the Assistant Attorney General in the Civil Rights Division.

We also have with us today Mr. George Henderson, who is behind me here, who is serving as general counsel of the Department of Justice's Community Relations Service. Mr. Henderson is here to answer any questions that you might have about the Community Relations Service.

Like many Members of this Committee, the Department is very concerned about the recent racial tension in Jena. The Department has been using and will continue to use all tools at our disposal to attempt to ease racial tensions, to ensure students can attend school free from a racially hostile environment and to address violations of Federal criminal law consistent with the principles of Federal prosecution.

This past Friday, I traveled to Jena, Louisiana, along with Ondray Harris, the acting director of the Community Relations Service, and Ms. Rena Comisac, the current acting Assistant Attorney General for the Civil Rights Division. We met there with several community and religious leaders, including Reverend Brian Moran, who is on our panel today. He is a pastor of the Jena Antioch Baptist Church and president of the local NAACP chapter in Jena. We had a thoughtful and productive dialogue, and we listened to their concerns raised by the recent events in their city.

The community and church leaders described the tensions that they were experiencing, and we described the efforts that the Department of Justice is taking to ease those tensions and to ensure that students can attend school free from a racially hostile environment. We also sought to assure the community leaders that the Department is fully, fully engaged in examining the allegations and in addressing their concerns.

Prior to our meetings on Friday, I had met with many of these community leaders at a public forum at which I spoke earlier this summer, alongside representatives from the Federal Bureau of In-

vestigations and the Community Relations Service. During that forum, we attempted to ease tensions in the community by answering questions about the role of the Department in responding to the situation in Jena.

I want to assure this Committee that the Department of Justice and its many components are actively engaged and responding to the situation in Jena. For example, the Department's Community Relations Service has devoted significant resources and time to restoring community stability in Jena.

As a separate agency of the Department of Justice established by the Civil Rights Act of 1964, the function of CRS is to address community conflicts arising from issues of race, color or national origin.

Much of the community has accepted and utilized CRS's services in the past year. CRS's expertise in conciliation and mediation has allowed the agency to address community wide tensions. The work of CRS is a critical piece of leadership that the Department of Justice will continue to provide to the community. The Jena community itself has expended a great deal of energy in coming together to develop ways to mend the wounds of the past. Toward this same goal, the Community Relations Service will continue to provide services as long as necessary and as requested by the Jena community and the surrounding region.

In addition to the work of CRS, the Civil Rights Division's Educational Opportunity Section has been actively engaged in addressing concerns regarding racial tension in the La Salle Parish school district, including Jena High School. The school district currently is under a Federal desegregation order, department attorneys have interviewed officials at the high school, have reviewed the discipline information for the school district and have initiated the comprehensive review of the La Salle school district with respect to its desegregation obligations.

Moreover, the Civil Rights Division Criminal Section is aggressively investigating numerous allegations of racially motivated criminal activity related to Jena. Shortly after the September 20 civil rights march, the FBI, the Civil Rights Division and the United States Attorney's Office opened investigations into allegations that threats have been directed at individuals involved in the Jena 6 case along with their families. If those threats continue—pardon me, if those threats constitute prosecutable violations of Federal criminal law, the department will take appropriate action.

A hanging noose is a powerful symbol of hate and racially motivated violence, and it can in many circumstances constitute the basis for a prosecution under Federal criminal civil rights laws, including the hate crime statute. The department has opened investigations into reports of noose hanging incidents in Louisiana, Maryland, New York, North Carolina, Pennsylvania and elsewhere.

Public concerns have been expressed about the situation in Jena stemming from a number of different incidents, including a noose hanging at the local high school last year. The FBI investigated the matter in September 2006, and my office, along with the Criminal Section of the Civil Rights Division, reviewed the FBI's reports to determine whether Federal criminal charges were appropriate.

Although the conduct is deeply disturbing and offensive, we decline to pursue charges after learning that the nooses had been

hung by juveniles; by juveniles who had been promptly sanctioned by the school. The school superintendent recently announced publicly that the punishment of the responsible students included a 9-day suspension, during which time they attended an alternative school, an additional 2 weeks of in-school suspension, several Saturday detentions in order to attend a discipline court and a referral to a family counseling program.

The decision to decline the case was in accordance with long-standing policy and principles of Federal prosecution of juveniles. As a general matter, Federal juvenile prosecutions which are referred to as delinquency proceedings are pursued very infrequently and only when the Attorney General certifies that certain settlor conditions have been met.

When they are pursued, the law mandates that the proceedings are nonpublic. A finding of delinquency in such a juvenile proceeding does not result in a criminal conviction and cannot be publicized. The United States Attorney's Office and the Civil Rights Division have always been and remain deeply committed to the vigorous enforcement of our Nation's civil rights laws.

In recent years, the Department of Justice has brought a number of high profile hate crime cases. As permitted by Federal criminal law, we continue to aggressively prosecute those within our society who attack others because of the victim's race, color, national origin or religious beliefs.

While we are deeply concerned about the recent events in Jena, we also are very proud of the response we have seen from the dedicated Justice Department employees who worked diligently on this matter. It is our sincere hope that through the process of first responding to community concerns; second, ensuring compliance with a Federal desegregation order; and third, investigating criminal allegations, we will find ways for the community to address the many important issues raised by the issues in Jena, Louisiana.

Thank you, Mr. Chairman.

[The joint prepared statement of Mr. Washington and Ms. Krigsten follows:]

JOINT PREPARED STATEMENT OF DONALD WASHINGTON AND LISA M. KRIGSTEN



## **Department of Justice**

---

JOINT STATEMENT OF

LISA M. KRIGSTEN  
COUNSEL TO THE ASSISTANT ATTORNEY GENERAL  
CIVIL RIGHTS DIVISION  
DEPARTMENT OF JUSTICE

AND

DONALD WASHINGTON  
UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF  
LOUISIANA  
DEPARTMENT OF JUSTICE

BEFORE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING  
THE JENA 6 AND THE ROLE OF FEDERAL INTERVENTION IN HATE  
CRIMES AND RACE-RELATED VIOLENCE IN PUBLIC SCHOOLS

PRESENTED  
OCTOBER 16, 2007

**JOINT STATEMENT OF**  
**LISA M. KRIGSTEN**  
**COUNSEL TO THE ASSISTANT ATTORNEY GENERAL**  
**CIVIL RIGHTS DIVISION**  
**DEPARTMENT OF JUSTICE**  
**AND**  
**DONALD WASHINGTON**  
**UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF LOUISIANA**  
**DEPARTMENT OF JUSTICE**  
**BEFORE**  
**THE COMMITTEE ON THE JUDICIARY**  
**UNITED STATES HOUSE OF REPRESENTATIVES**  
**CONCERNING**  
**THE JENA 6 AND THE ROLE OF FEDERAL INTERVENTION IN HATE CRIMES**  
**AND RACE-RELATED VIOLENCE IN PUBLIC SCHOOLS**  
**PRESENTED**  
**OCTOBER 16, 2007**

Mr. Chairman, thank you for this opportunity to describe the Justice Department's efforts in addressing recent events in Jena, Louisiana. Like many members of this Committee, the Department is concerned about the recent racial tension in Jena. We are aware that civil rights leaders and others throughout the nation are looking to the Justice Department for assistance in resolving the legal issues underlying the current tensions in the Jena community. The Department has been using, and will continue to use, all the tools at our disposal to attempt to ease racial tensions, ensure that students can attend school free from a racially-hostile environment, and address violations of federal criminal law consistent with the principles of federal prosecution.

To accomplish these goals, the Department has marshaled the resources of the Civil Rights Division's Educational Opportunities Section and Criminal Section, the Community Relations Service, the Federal Bureau of Investigation, and the United States Attorney's Office for the Western District of Louisiana. Together, these components have been working and will continue to work with local LaSalle Parish officials in resolving the current racial tensions.

The Department's Community Relations Service ("CRS") has devoted significant resources and time to restoring community stability in Jena. As a separate agency of the Department of Justice established by the Civil Rights Act of 1964, the function of CRS is to address community conflicts arising from issues of race, color, or national origin. Because of the agency's statutory mandate that demands impartiality and neutrality, as well as strict confidentiality in the provision of services to various communities, much of the Jena community has accepted and utilized CRS services in the past year.

Known throughout its history as the Federal Government's "peacemaker," CRS' expertise in conciliation and mediation has allowed the agency to address community-wide tensions in Jena. CRS has remained involved in ongoing discussions and conflict resolution activities with Jena community leaders, clergy, civil rights leaders, school officials, law enforcement, and government officials.



As just one example, in the days leading up to the September 20th civil rights march, CRS employees were deeply involved in coordinating with march and rally leaders and with local, state and federal law enforcement to ensure that the events in Jena proceeded peacefully. More recently, CRS has met with community leaders and school officials to help the community resolve any enduring racial tensions, and to begin the process of healing. On this front, the City Council in Jena recently voted to form a "Community Relations Committee" to gauge race relations and identify possible remedies, an action which indicates a willingness to examine all options for diffusing remaining tension in the community.

The work of CRS is a critical piece of the leadership that the Department of Justice will continue to provide to the Jena community. The Jena community, itself, has expended a great deal of energy in coming together to develop ways to mend the wounds of the past. Toward this same goal, the Community Relations Service will continue to provide services as long as necessary and/or requested by the Jena community and surrounding region.

In addition to the work of CRS, the Civil Rights Division's Educational Opportunities Section (EOS) has been actively engaged in addressing concerns regarding racial tension in the LaSalle Parish School District, including Jena High School. The school district currently is under a federal desegregation order.

Department Attorneys have interviewed officials at the high school, have reviewed discipline information for the school district, and have initiated a comprehensive review of the LaSalle Parish School District with respect to its desegregation obligations. This review will include an examination of school assignments, student transfers, extracurricular activities, discipline, faculty and administrators, facilities, and transportation.

Moreover, the Civil Rights Division's Criminal Section is aggressively investigating numerous allegations of racially-motivated criminal activity related to Jena. Shortly after the September 20th civil rights march, the FBI, the Civil Rights Division, and the United States Attorney's Office opened investigations into allegations that threats have been directed at individuals involved in the "Jena Six" case and their families. If those threats constitute prosecutable violations of federal criminal law, the Department will take appropriate action.

In addition, the Department has opened an investigation based on a report that a white man and a juvenile, with nooses tied on the back of their truck, attempted to intimidate African-American marchers who had gathered in Alexandria, Louisiana, following the September 20th civil rights rally in Jena. The FBI, the Criminal Section of the Civil Rights Division, and the United States Attorney's Office are actively investigating this allegation.

A noose is a powerful symbol of hate and racially-motivated violence, and it can, in certain circumstances, constitute the basis for a prosecution under federal criminal civil rights law. The Department is taking very seriously reports it has received of other noose hangings across the country, including in Maryland, New York, North Carolina, and Pennsylvania. In each of these cases, federal authorities have opened cases and are investigating whether the conduct constituted a prosecutable violation of federal law.

The concerns that have been expressed about the situation in Jena stem from a number of different incidents, including a noose-hanging at the local high school last year. The FBI investigated the matter in September 2006, and the Criminal Section and the United States Attorney's Office reviewed the FBI's report to determine whether federal criminal charges were appropriate. Although the conduct is deeply disturbing and offensive, the Section declined to pursue charges after learning that the nooses had been hung by juveniles who had been promptly sanctioned by the school. The school Superintendent recently announced publicly that the punishment for the responsible students included: (1) a nine day suspension, during which time they attended an alternative school; (2) an additional two weeks of in-school suspension; (3) several Saturday detentions; (4) an order to attend a discipline court; and (5) a referral to a family counseling

program.

The decision to decline the case was in accordance with long-standing Division policy and principles of federal prosecution of juveniles. As a general matter, federal juvenile prosecutions, which are referred to as delinquency proceedings, are pursued infrequently and only when the Attorney General certifies that certain statutory conditions have been met. When they are pursued, the law mandates that the proceedings, including evidentiary hearings, are not to be open to the public or press. A finding of delinquency in such a juvenile proceeding does not result in a criminal conviction, but rather in an adjudication of delinquency that can not be publicized.

The Civil Rights Division has always been, and remains, deeply committed to the vigorous enforcement of our nation's civil rights laws. In recent years, the Department has brought a number of high-profile hate crime cases. As permitted by federal criminal law, we continue to aggressively prosecute those within our society who attack others because of the victims' race, color, national origin, or religious beliefs.

Some recent examples of cases prosecuted by the Division's Criminal Section include:

- *United States v. Saldana*, in which four members of a violent Latino street gang in Los Angeles were convicted of participating in a conspiracy aimed

at threatening, assaulting, and murdering African-Americans in a neighborhood claimed by the defendants' gang. All four defendants received life sentences. In recognition of the success in this case, the prosecution team was awarded the Anti-Defamation League's 2007 Helene and Joseph Sherwood Prize for Combating Hate and the International Association of Chiefs of Police 2007 Civil Rights Award.

- *United States v. Fredericy and Kuzlik*, in which two men were convicted in Cleveland, Ohio, for their roles in pouring mercury, a highly toxic substance, on the front porch and driveway of a bi-racial couple and their young child. This was a racially-motivated act that was done with the intent to force the victims out of their home.
- *United States v. Walker*, in which three members of the National Alliance, a notorious white supremacist organization, were convicted with assaulting a Mexican-American bartender at his place of employment in Salt Lake City, Utah. The same defendants allegedly assaulted an individual of Native-American heritage outside another bar in Salt Lake City. The Anti-Defamation League praised the Division's efforts in successfully prosecuting this important hate crimes case.
- *United States v. Shroyer* and *United States v. Youngblood*, cases in Indianapolis and Detroit, respectively, in which individuals were successfully prosecuted for burning crosses outside the homes of African-American individuals with the intent to interfere with victims' housing rights.
- *United States v. Eye and Sandstrom*, a pending case in Kansas City, Missouri, in which the defendants allegedly shot and killed an African-American man as he walked down the street. The government alleges that the defendants drove past the victim, whom they did not know, and shot at him because of his race. The defendant's initial shots missed the victim, but the defendants allegedly circled the neighborhood, found the victim again, and shot him in the chest, killing him. Trial is currently set for January 10, 2008. If the defendants are convicted, the Government will seek to have the death penalty imposed against them.

In addition, the Civil Rights Division and the United States Attorney's Office for the Southern District of Mississippi recently secured the conviction in *United States v. Seale*, a case stemming from the 1964 murders of 19-year-old Charles Moore and Henry Dee in Franklin County, Mississippi. In June 2007, former klansman James Seale, 71, was convicted of kidnapping and conspiracy in connection with the murder of Moore and Dee. The defendant received two life sentences for his role in that horrific crime. The Department continues to work with the National Association for the Advancement of Colored People, the National Urban League, and the Southern Poverty Law Center, to identify additional unresolved civil rights era murders.

#### Conclusion

Thank you for inviting us here today to talk about the Department's actions in response to the recent events in Jena, Louisiana. While we are deeply concerned about the recent events in Jena, we also are very proud of the response we have seen from the dedicated Justice Department employees who worked so diligently on this matter. It is our sincere hope that, through the process of responding to community concerns, ensuring compliance with a federal desegregation order, and investigating criminal allegations, we will help find ways for the community to address the many important issues raised by the recent events in Jena, Louisiana.

Mr. CONYERS. Thank you very much, Mr. Washington.

The Chair notes that the Department of Education has in the room the Office of Legislation and Congressional Affairs person, Mr. James Kuhl, and the attorney who is in the office of the general counsel of the Department of Education Mr. Brandon Sherman.

We now turn to the Southern Poverty Law Center and the witness for them, Mr. Richard Cohen, who is no stranger to the Judiciary Committee. Morris Dees and he have worked with this Committee across the years, and we have had a great deal of success in many of the projects that the Committee and the Southern Poverty Law Center have engaged in together. Welcome again to this hearing.

**TESTIMONY OF J. RICHARD COHEN, PRESIDENT AND CEO,  
SOUTHERN POVERTY LAW CENTER**

Mr. COHEN. Thank you Mr. Conyers, thank you very, very much for those kind remarks. I appreciate the opportunity to be here and to speak to Members of the Committee.

I want to note at the start that we are deeply involved in the affairs at Jena—in Jena. Because it appears to us that the Jena 6 were overcharged and because we were quite concerned about the adequacy of the legal representation that they were receiving, we are providing legal counsel to some of the teens. In doing so, let me quickly note that we don't excuse, condone violence in any way. Our heart goes out to Justin Barker and his family. We know he has suffered terribly.

Nevertheless, we think it is important that the scales be balanced in this case. We are also monitoring the White supremacist reaction to the events in Jena. Unfortunately White supremacists around the country are trying to exploit the situation. We had indications, for example, that White supremacists were going to bring weapons to the rally that was held in September 20 and immediately passed that information on authorities.

We have also been advising schools about how they can avoid situations like Jena in their own locales. We've published a booklet, "Six Lessons From Jena." I hope that all Members of the Committee have it. We've made it available to 50,000 teachers so far and will make it available to 400,000 teachers in January.

The Federal Government of course has a very, very strong interest in promoting racial harmony in schools. A racially hostile atmosphere violates the Constitution of the United States in any public school, and it violates the Constitution—it violates Title VI of the Civil Rights Act of 1964 in any school that receives Federal financial assistance.

Unfortunately, the problem of racial violence continues to plague our schools. FBI statistics reflect that schools and colleges are the third most common venue for hate crimes. And unfortunately, the number of hate crimes that the FBI reports is really but a fraction of the hate crimes that occur. A study by the Bureau of Justice statistics 2 years ago demonstrated that hate crimes are probably—that the FBI figures probably understate the nature of the problem by a factor of 20 or 30. As Ms. Waters indicated in her opening remarks, the problem of hate crime is not confined to the south; one

sees it all over the Nation in our schools in very, very unfortunate incidents.

Also, I want to say that it's not confined to disputes between Black and White students. There have been a number of unfortunate incidents, in California for example of, you know, of terrific tensions between Black and Latino students that's really quite unfortunate. Now there is no sure-fire formula for dealing with the racial tensions at any school, but what's happened in Jena is probably a textbook example of what shouldn't occur.

As Mr. Scott indicated, a question was asked, May we sit under a particular tree? And the principal said, Well, of course, you can sit anywhere that you want. What the principal didn't do is, of course, say, Why do you ask that question? What makes you think you shouldn't be able to sit there? The question itself revealed so much about the climate at the school.

After the nooses were hung, the school system hesitated. There as one penalty and then another, and I think that confused the community. Understandably when the penalty was reduced from expulsion to suspension, a number of children—a number of Black children were quite upset, there was no public apology. There was no component in the suspension that was designed to promote empathy or understanding. Black students staged a protest under the proverbial White tree. Instead of opening a dialogue with the Black students, the administration attempted to shut the dialogue down. Of course, Mr. Walters added fuel to the fire, with his famous statement, with the stroke of my pen, I can make your lives disappear. Not the kind of thing a public official should say in this situation.

Unfortunately, things went from bad to worse. Black parents went to the school board to try address it. At first, they were completely rebuffed. They weren't allowed. They weren't on the agenda. I know that this Committee and this body has its rules, the Robert's Rules of Order are very important, but sometimes common sense has to prevail. And when the community is hurting, they ought to be heard, and a dialogue ought to be opened with them.

The district attorney's decision to charge the Jena 6 with attempted murder further exacerbated the situation. We can trust the police in our country to usually bring the harshest charge that they can think of, and in this case, they brought aggravated battery charges, which themselves were quite harsh and probably not called for by the facts. The district attorney on his own initiative upped the ante, almost as if he was trying to say, Look what I can do with the stroke of my pen. What he did seemed to the community, and it seems pretty obvious to most of the country, stands in stark contrast to what he did in the case of the White students.

In an ideal world, we know that justice should be blind. In the real world, it is not. Prosecutors see race. And in Jena, it seems as if Black children were hammered, and White children were given a pass or a slap on the wrist.

The noose hanging itself could have been prosecuted under Louisiana law. It also could have been prosecuted under 18 U.S.C. Section 245. I think if you look at the face of the statute section B, there are numerous sections that could have been invoked there.



But we want to be real clear: We're not contending that the noose hangers should have been prosecuted under the criminal law. We point it out only to contrast it with the way the prosecutor exercised his enormous prosecutorial discretion in this case.

Although we believe that the Jena 6 were terrifically overcharged, we don't think it is going to help matters by prosecuting the noose hangers and sending them to jail. Two wrongs don't make a right it seems to us. A far wiser course than invoking the criminal law it seems to us would be to devote Federal resources to efforts to smooth racial tensions at the school.

Ms. Jackson Lee made a good point. The Department of Education has regulations on its books that allow it to investigate cases of racially hostile atmosphere outside the context of school desegregation cases. And when those nooses were hung and when there were news reports about it, the Office For Civil Rights in Dallas should have been on the scene.

Unfortunately, despite the fact that these incidents are very common, the resources devoted to them by the Federal Government have shrunk in recent years; 15 years ago, the Department—the Community Relations Service, a very, very fine organization, had more than 100 authorized positions. Today, their staff is below 50. There have also been a number of Federal programs that provide grants to many good nonprofit organizations—the Southern Poverty Law Center doesn't accept Federal money, so I'm not talking about us—received grants from many non profit organizations, and they did a lot of good work. Unfortunately, that money has seemed to dry up. There have also, of course, been technical problems with data collection, and I don't think we really have a true picture of what's going on in our Nation's schools.

Mr. CONYERS. The gentleman's time is running out.

Mr. COHEN. If I could close by saying that we have been critical of the public officials in Jena, but we are confident that they are well-meaning professionals who simply weren't prepared to deal with the problem at their schools. The Federal Government working with experts can help them. I can think of no better ending for the unfortunate events in Jena than a renewed Federal effort toward that goal. Thank you for the extra time, Mr. Chairman.

[The prepared statement of Mr. Cohen follows:]

#### PREPARED STATEMENT OF J. RICHARD COHEN

My name is Richard Cohen. I'm the president of the Southern Poverty Law Center (SPLC), a civil rights organization dedicated to fighting hate and bigotry and to seeking justice for the most vulnerable members of our society. I appreciate the opportunity, Mr. Chairman and members of the Committee, to appear before you in these hearings on "Jena 6 and the Role of Federal Intervention in Hate Crimes and Race-Related Violence in Public Schools."

In our view, the federal government has a strong interest in promoting racial harmony in our nation's school. In some cases, this interest may require federal officials to investigate and prosecute hate crimes that occur at schools or to assist State and local law enforcement agencies in their investigation or prosecution of such crimes. But we believe that the bulk of the federal effort should be aimed at preventing hate crimes from occurring in schools in the first place and at helping State and local officials to respond to the tensions that often occur in the aftermath of such crimes. Better data on the incidence of hate crimes would surely be helpful in that effort.

I should note at the start that we are deeply involved in the controversy surrounding the Jena 6, the six black teens charged with serious crimes stemming from the beating of a white student, Justin Barker, at the public high school in Jena, Louisiana, during a period of racial tension in 2006. We do not excuse violence of

any kind or minimize Justin's injuries in any way. Our hearts go out to him and his family. But it appears to us that the Jena 6 have been overcharged and have been in danger of not being adequately represented. For these reasons, we are providing legal assistance to some of the teens.

We also are monitoring the reaction of white supremacist organizations to the Jena situation. When our investigative unit, which tracks hate group activity and hate crime trends across the nation, detected evidence that neo-Nazis were contemplating bringing weapons to a rally organized by Jena 6 supporters, for example, we immediately contacted Louisiana law enforcement officials. In addition, we have been advising educators, through our Teaching Tolerance program, on how they can avoid Jena-type situations. Our "Six Lessons from Jena" is available on the Internet and has been sent to more than 50,000 educators. We've provided the shortened, print version to members of this Committee.<sup>1</sup>

The federal government has a strong interest in promoting racial harmony in our nation's public schools as well as in private schools that receive federal financial assistance. If a racially hostile atmosphere exists at a school, students are denied equal educational opportunities, in violation of the Fourteenth Amendment to the Constitution of the United States in the case of public schools and in violation of Title VI of the Civil Rights Act of 1964 in the case of any school that receives federal funds. More than 40 years ago, Congress passed legislation establishing the Community Relations Service to provide assistance to communities in situations where "peaceful relations among the citizens of the community . . . are threatened" by racial difficulties.<sup>2</sup> Over the years, the Community Relations Service, other offices within the Department of Justice, and the Department of Education have sponsored various initiatives to prevent and respond to hate crimes and bias incidents in our nation's schools.

Unfortunately, racial problems continue to plague many of our schools. FBI hate crime data consistently demonstrate that "schools and colleges" are the third most common venue for hate crimes in our country.<sup>3</sup> And without question, the FBI hate crime data significantly understate the true dimensions of the problem. As a recent Bureau of Justice Statistics study demonstrated, the total number of hate crimes in the United States may be 20 to 30 times greater than the FBI statistics reflect, and race is their most common motivation.<sup>4</sup> Despite the requirement that colleges report hate crimes to the federal government, they often fail to do so.<sup>5</sup>

The problem of hate crimes and racial unrest at schools is not confined to the South—the recent noose hangings at Columbia University in New York City and at the University of Maryland are examples of its widespread nature—and is not confined to tensions between black and white students. In California in recent years, for example, tensions between black and Latino students have erupted in many schools. In one high school in Rialto in 2004, over fifty students were injured in a lunchroom racial brawl.<sup>6</sup>

In Jena, racial tensions erupted when three white students hung nooses from a schoolyard tree the day after black students sat under it. (The tree had apparently been a traditional gathering place for white students.) Local officials appear to have handled the incident poorly. After the initial decision to expel the noose hangers was reduced to some form of suspension that did not include a public apology or an educational program designed to promote empathy and understanding,<sup>7</sup> black students staged a protest under the tree from which the nooses were hung. Instead of providing the students with an opportunity to express their concerns in a constructive way, the principal called an assembly and told the students that it was time to put the incident behind them. At the same assembly, the LaSalle Parish District Attorney, flanked by police officers, ominously warned the students to settle

<sup>1</sup> Our Teaching Tolerance program provides free, anti-bias materials, including documentary films on the civil rights movement, to schools throughout the nation. After the Columbine tragedy, we developed *Responding to Hate at School* and sent a free copy to every public school in the nation. Available at <http://www.tolerance.org/pdf/rthas.pdf>, the guide is designed to help educators respond promptly and effectively when hate or bias incidents occur at their schools.

<sup>2</sup> 42 USC §2000g-1.

<sup>3</sup> See, e.g., U.S. Dep't of Justice, *2005 Hate Crime Statistics, Location Type*, <http://www.fbi.gov/ucr/hc2005/locationtype.htm>.

<sup>4</sup> Caroline W. Harlow, U.S. Dep't of Justice, *Hate Crime Reported by Victims and Police* (NCJ 209911 Nov. 2005).

<sup>5</sup> U.S. Gen. Accounting Office, *Campus Crime: Difficulties Meeting Federal Reporting Requirements* (GAO/HEHS-97-52 March 1997).

<sup>6</sup> Susy Buchanan, *The Rift*, 110 Intelligence Report 8, 10 (SPLC 2005).

<sup>7</sup> The Jena school superintendent later told the Chicago Tribune that, "Adolescents play pranks. I don't think it [the noose hanging] was a threat against anybody." Howard Witt, *Racial Demons Rear Heads*, Chicago Tribune, May 20, 2007.

down. “With a stroke of my pen, I can make your lives disappear,” he told them. There is a dispute over whether he was looking at the black students when he uttered these words; however, there is no dispute over the fact that the black students were the ones who were protesting the decision not to expel the white noose hangers.

After the assembly, a group of black parents came to a school board meeting to express their disagreement with the decision not to expel the noose hangers. Because they had not arranged to be on the agenda, they were denied an opportunity to address the board. The following week, they were given that opportunity. Unfortunately, the board was largely silent and did not take the occasion to open a meaningful community dialogue.

The District Attorney’s decision to charge the Jena 6 with attempted murder further exacerbated the racial tensions in the community. The police originally charged the six with aggravated battery, a harsh charge under the circumstances. But the District Attorney, in an apparent effort to show what he could do with a stroke of his pen, used his discretion to increase the charges even further.<sup>8</sup>

The District Attorney’s decision to increase the charges against the Jena 6 stands, in the eyes of many in Jena and throughout the country, in stark contrast to how he treated white youth involved in criminal conduct in LaSalle Parish during the same period. In an ideal world, justice would be blind. But in the real world, it is not; prosecutors see race. In Jena, the District Attorney appears to have thrown the book at black students while giving white youth a slap on the wrist or an outright pass.

A few days before the Barker incident, for example, a black student (one of the six who was later charged in the Barker incident) was reportedly attacked by a group of white youths. The District Attorney charged one white youth with a misdemeanor, and he served no jail time. The other white youth were not charged.

Likewise, the noose hangers—the white youth whose actions sparked the racial turmoil at the school—were never charged with a crime, although they probably could have been. Louisiana Revised Statute 14:107.2, for example, creates a hate crime for any institutional vandalism or criminal trespass motivated by race. Federal law prohibits efforts to intimidate persons from “enjoying the benefits of any program or activity” receiving federal dollars (public schools, of course, get federal funds), from “attending any public school,” or from “enjoying any benefit, . . . privilege, [or] facility . . . provided . . . by any State or subdivision thereof” on the basis of race. If the violation involves “the use . . . or threatened use of a dangerous weapon”—and a noose could certainly qualify—one could be sent to prison for ten years.<sup>9</sup>

Of course, we would never contend that the noose hangers should have been sent to prison, charged with a crime, or even expelled for that matter. Although we believe that the Jena 6 were seriously overcharged, sending white students to jail would be a poor way of balancing the scales. The federal government should be prepared to investigate and prosecute serious hate crimes that occur in our nation’s school when state and local authorities fail to take appropriate action.<sup>10</sup> But the criminal law is a blunt instrument, and too many of our young people are already being pushed out of our schools and into our prisons.

A far wiser course than increasing federal prosecutions would be increasing federal investment in services designed to soothe the racial and ethnic tensions simmering in our nation’s schools and to respond promptly when hate crimes occur. Congress should consider mandating an increase in the staff of the Community Relations Service. As our nation’s diversity has increased, the size of the Community Relations Service has decreased. In addition, Congress should consider mandating an expansion of programs to fund the activities of non-profit organizations working to prevent hate crimes in our nation’s schools.<sup>11</sup> In recent years, federal funding for such programs has been severely curtailed despite the fact that the problems they

<sup>8</sup> Even after eventually dropping the attempted murder charges, the District Attorney has continued to pursue the aggravated battery charges on the theory that the boys’ tennis shoes were dangerous weapons.

<sup>9</sup> 42 U.S.C. § 245(b). Although the noose hangers may have been under eighteen, they could have been prosecuted in federal court and charged as adults. See 18 U.S.C. § 5032.

<sup>10</sup> The Local Law Enforcement Hate Crimes Prevention Act of 2007, which we support, would allow the Department of Justice to assist and to provide funds to State and local law enforcement agencies in the investigation of hate crimes under State or local law. The Act would give priority to rural jurisdictions like Jena facing extraordinary expenses.

<sup>11</sup> The Southern Poverty Law Center provides free, anti-bias materials to schools across the country, but does not seek or accept federal monies.

address have not diminished.<sup>12</sup> Whether conducted by federal agencies or non-profit organizations, hate crime trainings should include a component for raising the awareness of prosecutors about how their public actions and the exercise of their discretion can inflame or calm a volatile situation.

Congress also should hold hearings on the federal effort to collect hate crime data. The “most thorough assessment” of that effort—a study conducted for the Bureau of Justice Statistics—concluded that “the full picture of hate crime . . . has not yet been captured through official data.”<sup>13</sup> Hate crimes, including those in our schools, are vastly underreported for a variety of reasons.<sup>14</sup> The clearer our picture of the true dimensions of the hate crime problem, the better our strategies to combat it are likely to be. Passage of the Local Law Enforcement Hate Crime Prevention Act of 2007 would be a good start because it would require the collection of data about hate crimes committed by and against juveniles.

We have been critical of the public officials in Jena. But we are confident that they are well-meaning professionals who simply were not prepared to deal with the racial tensions at their school. The federal government, working with experts in the field, can help officials like those in Jena work toward the goal of creating schools where all students feel physically and emotionally safe. It is difficult to think of a better ending for the unfortunate events in Jena than a renewed federal effort toward this goal.

Thank you for allowing me to appear before you.

Mr. CONYERS. Thank you so much.

We now turn to reverend Brian Moran, pastor of the Jena Antioch Baptist Church, acting president of the NAACP Jena Chapter, and we note that the Reverend has provided a great deal of local leadership as well as spiritual guidance in the wake of the events that bring us here today.

We welcome you here to the Committee.

**TESTIMONY OF REVEREND BRIAN L. MORAN, PASTOR OF THE  
JENA ANTIOCH BAPTIST CHURCH AND PRESIDENT OF THE  
NAACP JENA CHAPTER**

Rev. MORAN. Thank you. First, I want to express my gratitude for this opportunity to serve as a witness to shed light on the issues surrounding the Jena 6 controversy. I am here to share my expressions of the tensions that existed in our tiny community leading up to the unfortunate incidences, which resulted in six Black students being arrested for one school yard fight.

In Jena, every one knows everyone. Unfortunately, there is great deal of racial indifference that seems to have festered for many years. This indifference has caused a good many of our citizens, both Black and White, to have harsh and mixed emotions toward each other. The noose hangings did not help things at all. But Jena has a strong sense to get past this episode in our history. However, I believe as a minister and a citizen that alone will not suffice. Injustice dealt by Judge J.P. Mauffrey and District Attorney Reed

<sup>12</sup> An excellent program that no longer receives federal support is Partners Against Hate. Created with support from the Department of Justice and the Department of Education, Partners Against Hate developed tools and training programs and provided technical assistance to help schools create safe learning environments, prevent hate crimes from occurring, and respond appropriately when bias incidents do occur. The program, a collaborative one developed by the Anti-Defamation League, the Leadership Conference on Civil Rights Education Fund, and the Center for the Prevention of Hate Violence still maintains an excellent website, [www.partnersagainsthate.org](http://www.partnersagainsthate.org).

<sup>13</sup> Michael Shively, Abt Assocs. Inc., *Study of Literature and Legislation on Hate Crime in America* 57 (2005) (citing report prepared for BJS in 2000); see also *Discounting Hate*, 104 Intelligence Report 6 (SPLC 2001) (describing some of the problems with the collection of hate crime data).

<sup>14</sup> See *supra* p. 3 and note 4.

Walters over the past year must be atoned; justice must be done for our community to heal.

Even our school board has a double standard for Blacks, and this whirlwind of events merely touched the surface. I know the facts of the Jena have been retold a thousand times over, and there are those who question whether or not these things actually happened. I am here to tell you they did. But there are people in this room who probably don't know that before sitting under the Whites-only tree, one of the Black students actually went to the principal and asked whether he could sit under the tree. He was told that he could. We all know that, soon after, the nooses were hung from the tree as a sign of threats and hate. More than that, many White students began screaming "nigger" across the school yard whenever Black students would pass. These students felt verbally abused but did not know that they could do anything about it.

Most of you know that District Attorney Reed Walters said, With the stroke of a pen, I can erase your lives. But what you don't know is how helpless the families of these children felt at that or how hurt they were that someone would use his job to take away a child's life when all he was trying to do was get an education.

Throughout Jena's history, there has always been two systems of justice, one for Blacks and one for Whites. The stories have been passed down in my family of individuals like Bobby Ray Smith, who was killed and thrown into an oil pit by a group of White men, but there were no investigations no matter how loudly the Blacks in the community protested. And even Billy Hunter, who was stomped to death by a White man who received only 2 years in prison. Can you imagine the outrage, the hurt, the shame our families felt when we think about these six boys and the incidents that took place last year in Jena, at Jena High School? These stories always will remain in the back of our minds.

Lastly and most recently the incident where two White males ran over the church signs shortly after an NAACP meeting at the Antioch Baptist Church where I pastor, which was ruled out by many not a hate crime. We know that justice can be done, but the question is, why hasn't it been done? I am grateful for the opportunity to tell my brief story which actually is a much larger and longer story, but I am hoping you will get the point today, that Jena can be a great town, but right now, it is a town where two systems of justice exist, and that is simply un-American. And we believe it is no longer acceptable. Thank you for your time.

[The prepared statement of Rev. Moran follows:]

PREPARED STATEMENT OF REV. BRIAN L. MORAN

First I must express my gratitude for this opportunity to serve as a witness to shed light on the issues surrounding the Jena 6 controversy. I am here to share my impressions of the tensions that existed in our tiny community leading up to the unfortunate incidences which resulted in six young black students being arrested for a school fight.

In Jena, everyone knows everyone. Unfortunately, there is a great deal of racial indifference that seems to have festered for many years. This indifference has caused a good many of our citizens, both black and white, to have harsh and mixed emotions toward each other. The noose hanging did not help things. But Jena has a strong sense to get past this episode in our history. However, I believe, as a minister and citizen, that "will" alone will not suffice. The injustice dealt by Judge J. P. Mauffray and District Attorney Walters over the past year must be atoned. Jus-

tice must be done, for our community to heal. Even our school board has a double standard for blacks and this whirl wind of events merely touched the surface.

I know the facts of Jena have been retold a thousand times over, and there are those who question whether any of it actually happened. I'm here to tell you, it did. But there are people in this room who probably don't know that before sitting under the "whites only" tree, one of the black students actually went to the principal and asked if he could sit under the tree. He was told he could. We all know that soon after that, nooses were hung from the tree as a sign of threats and hate.

More than that, many white students began yelling Nigger across the school yard whenever black students would pass. These students felt verbally abused, but did not know they could do anything about it.

Most of you know that District Attorney Reed Walters said "with the stroke of a pen, I can erase your lives." But what you don't know is how helpless the families of these children felt at that, or how hurt they were that someone would use his job to take away a child's life when all he was trying to do was get an education.

Throughout Jena's history, there has always been two systems of justice, one for blacks and one for whites. The stories have been passed down in my family of individuals like Bobbie Ray Smith, who was killed and thrown into an oil pit by a group of young white men, but there was no investigation, no matter how loudly the blacks in the community protested. And Billy Hunter, who was stomped to death by a white man, who received only two years in prison. Can you imagine the outrage, the hurt, the shame that our families felt? When we think about what happened to the 6 boys last year at Jena high, these stories are always at the back of our minds. We know what can be done, and we know what hasn't been done. Justice.

I am grateful for the opportunity to tell my brief story, which is actually a much longer story, but I'm hoping you will get the point. That Jena can be a great town, but right now it is a town where two systems of justice exist, and that is simply unAmerican, and we believe it is no longer acceptable. Thank you.

Mr. CONYERS. Thank you very much, sir.

Now we turn to professor Charles Ogletree, director of the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School and who has been most recently been before this Committee in terms of hearings on the Tulsa race riots of 1921 and has participated with the Congressional Black Caucus's criminal justice hearings across the years. He is a noted author, lecturer and has been in the courts for many decades.

We are happy to have you here again, Professor Ogletree.

**TESTIMONY OF CHARLES J. OGLETREE, JR., DIRECTOR, THE CHARLES HAMILTON HOUSTON INSTITUTE FOR RACE AND JUSTICE, HARVARD LAW SCHOOL**

Mr. OGLETREE. Thank you, Congressman Conyers and also the Ranking Member, Congressman Smith. I am very happy to be here before this Committee and other Members of Congress who are here today. And I thank you for giving me the chance to speak briefly. I have prepared an extensive report that I hope will be made part of the record that has data as well as some suggestions for future directions, as Congress Smith mentioned, and I hope that that will be considered by this Congress.

In the short time that I have today, I want to say a few things. There is a sign over the courthouse in Florida that has a useful epithet; it says, The court is where the injured flock for justice. And it reminds me of how the people in Jena today are wondering, where do they go? Where can they find a sense of justice? Where can they be treated not better, not differently, but just fairly?

This incident that we have been talking about is a microcosm of a larger set of incidents that have occurred in Jena. And yet what occurred in Jena in 2006 is not isolated; it is not different than

what happened to Genarlow Wilson in Georgia; than what happened in West Virginia; at the University of Maryland; at Hempstead, New York; at Columbia University. And the irony is that just a year ago, I wrote a book with Professor Austin Sarat called, "From the Lynch Mob to the Killing State: Race and the Death Penalty in America," looking back at the history of these incidents with the idea that, thank God we're not there anymore.

It is ironic that 1 year after this book is published, looking at the issues of lynchings and disparities in our criminal justice system, we find them writ large, not just in Louisiana but across the country. At that time, we talked about the fact that while lynching seemed historic, we can't forget what happened to James Byrd in Texas in 1998 or Emmett Till in Mississippi in 1955.

As much as we want to put these incidences in the back of our minds, it reminds us, what happened with that tree is symbolic of the fact that we have yet to come to grips with the fact that every citizen in America should be treated the same. And it is not just about the young men who hung those nooses. I think that while that is an important fact, the fact is that there is a cancer in Jena, and we tried to treat it with aspirin and good wishes and hope. But the reality is that it requires a radical solution.

I hope the Committee will not just look at what we can do in terms of the Federal law, which I'll talk about in the time I have remaining, but what we can do locally right within the community of Jena.

When any public official or parent tells a child, a teenager that hanging a noose is a prank or a practical joke, in America that has been created as a result of violence in the Civil War and other issues of slavery and Jim Crow segregation, they are not really addressing the underlying issue of the tensions in our community. And the parents need that. What is the legislative response? The number of ways that this Congress can look into this issue is numerous. I adopt and embrace all of the remarks you heard by Richard Cohen in terms of some options, not only the Title VI of the 1964 Civil Rights Act, but one important issue educationally is No Child Left Behind.

As this Congress is examining what it shall do going forward, the one thing we need to understand is that this is a failing school system. It's not just this incident, but who's graduating? Who's been expelled? Or who is being suspended? The data we have that is data for Jena, Louisiana, tells us that there is a great disparity between Black and White children in terms of suspensions and expulsions. That shouldn't happen in Jena. It shouldn't happen anywhere else in America today.

Moreover, there is a report that was just released, by Marian Wright Edelman called, "America's Cradle-to-Prison Pipeline," by the Children's Defense Fund. It is a reminder that our children are being criminalized from the ages of 5, 6, 7, 8. Here is a child sitting on a crate because he can't stand up to be fingerprinted for an alleged crime in his community. This is what we're dealing with today in a very powerful and graphic way.

The other point about Jena is this, and we'll talk about it more in the questions in terms of remedies, one of the important things is that, Mr. Washington mentioned, there is a 1971 school desegre-

gation order, so we have a history in Jena, Louisiana, and we need to examine not just legal issues in terms of education but also the criminal justice system in a very powerful and thorough way.

Finally, I would ask that this Committee think about what Mr. Washington said about the punishment of the two young people who were held responsible for the nooses; 9-day suspension, 2 weeks in school suspension and family counseling. But have these young men ever been told or understood that what they did was not just a slight against the young people in Jena, Louisiana, but a slight on America? When the world looks here and sees nooses hung and understands that we are still, in 2007, dealing with a history that we thought we left a decade ago and certainly a century ago.

I implore this Committee to use all of its authority to look at Federal powers, look at the prosecuting judge, to look at Federal powers to look at the educational system for No Child Left Behind and also look at the Federal power to see, what can we do on the ground to improve race relations in Jena, Louisiana, to do it with dispatch. Thank you.

[The prepared statement of Mr. Ogletree follows:]

PREPARED STATEMENT OF CHARLES J. OGLETREE, JR.

Dear Chairman John Conyers and Members of the House of Representatives Judiciary Committee:

My name is Charles Ogletree. I am the Jesse Climenko Professor of Law at Harvard Law School. I am also founder and Executive Director of the Charles Hamilton Houston Institute for Race and Justice, also at Harvard Law School.

Charles Hamilton Houston was a native of Washington, D.C., a graduate of the M Street High School, now known as Dunbar High School and valedictorian at Amherst College before he began his career at Harvard Law School in 1919. Later, as vice-dean of Howard Law School, Houston was instrumental in developing the strategy employed by Thurgood Marshall, and many of Houston's other protégés, in *Brown v. Board of Education*. Charles Hamilton Houston played a pivotal role in ending Jim Crow segregation in America. He trained a generation of lawyers who went on to have a profound impact on eradicating enforced segregation and other racial injustices. As Executive Director of the Charles Hamilton Houston Institute for Race and Justice, I, with a staff of experts in the areas of education, housing, child development and criminal justice are attempting to carry on Houston's legacy in remedying racial inequalities in opportunity and related injustices in connected systems of education and criminal justice.

The House Judiciary Committee's decision to conduct hearings to examine recent incidents Jena, Louisiana, marks an important moment in history. As you know, Jena, before 2006, was a quiet community of 3,000 people. In less than a year, the community became a lightning rod for accusations about racism and injustice. Jena became a stage on which our most stubborn social problems play out. These are long-standing challenges that are so complex and difficult to deal with rationally that we often take the more comfortable route and avoid engaging them. I applaud the Committee's fortitude in confronting our contemporary version of racial inequalities and unresolved race-related tensions that do not look so different from the sort Charles Hamilton Houston, his colleagues and students took on decades before.

My areas of expertise are civil rights and criminal justice. I have been teaching at Harvard Law School for the last 32 years. For eight years, I was a lawyer at the Public Defender Service here in Washington, DC. During the course of my practice and teaching, I have had the chance to not only represent clients, but to observe race and class disparities in education and criminal justice from a wide range of perspectives. As I look at what happened in Jena, Louisiana last year, and the implications of those incidents for shaping public policy, I see ample room for Congress to thoroughly investigate, better understand and then address the racial disparities and disparate treatment that are hallmarks of our educational and criminal justice systems in every corner of the United States. Both systems seem to me to require intervention on a variety of levels. Prior testimony at this hearing, along with material already in the Congressional record highlights some salient issues. I will point



out a few of the most urgent and significant matters I think require attention. Then I will offer suggestions to help us move forward.

First, no public school in the United States should have a policy, either written or implicit, that reserves sections of the grounds for students of a certain race. It is unlikely that a modern-day school official would write a restriction of that nature down on paper. It is unlikely that any school board would be so ignorant as to pass such an ordinance. Such “official” regulations certainly did not exist in Jena. However, the mere fact that black students felt compelled to inquire of the school principal whether or not they were allowed on an particular area of public property is a clear signal that a more explicit discussion about race and access is required. No child of any race should be forced to encounter a school climate that is so hostile that a he or she might think that her skin color or, say, her native language or country of origin might limit where she could sit, stand, play or learn.

Second, and related to this “hostile environment” the incidents in Jena send out another alarm. We have failed at basic lessons of history if an American can blithely characterize hanging nooses on a tree as an innocent prank or practical joke, as some officials and parents in Jena have done. This is not an act that should be minimized, laughed off or chocked up to childhood shenanigans.

The history of lynching in the United States, most notably in the south, is not ancient. It has an especially intense emotional meaning to African Americans. With more than 3,000 people lynched from the late 1800’s through the early 1900’s—children often attended such events as if they were carnivals<sup>1</sup>—a noose today is a powerful symbol of American white supremacy and pure barbarism. Given the context, the noose, particularly to an African-American who knows his history, is nothing less than an expression of hatred. It is, too, a warning of impending violence and likely death.<sup>2</sup> Speaking as an African-American, I can say that the image of a noose is as frightening as it is enraging.

Moreover, if the students responsible for hanging the now infamous nooses in Jena are unable to appreciate the significant brutality of such an act, that lack of understanding should be addressed for the good of the collective community. If all that emerges from these unfortunate events are educators’ more systematically informing community members and students about the shameful history of lynching that will be a positive step. We might view my suggestion as a community-level matter for local educators to address either by taking honest stock of school racial climate, enacting policies to enhance racial understanding, educating the community about racial history and establishing clear rules that take a strong stance against discrimination and racism and “hostile environments” in any form. This also seems to be an example of where a “restorative justice” approach to school discipline would be both appropriate and productive. In restorative justice approaches, the perpetrators of the crime must make amends to their victims, and undertake activities that help them more fully comprehend the impact of their actions on their community.<sup>3</sup>

It may be far easier for local officials in politicized school districts to take on these volatile issues and enact enlightened “restorative justice” approaches if national elected leaders encourage them to do so and if, the federal government offered incentives and endorsed examples of “best practice” programs and policies that might improve cross-racial relations and foster a climate of tolerance and a deeper understanding and appreciation between racial groups.

Third, we must also carefully and honestly consider the question of whether or not the black teens prosecuted in Jena were treated fairly, without regard to race or class. It is in that vein that the House Judiciary Committee can play a leading, important role in a variety of ways.

It is important for us to understand that Jena is not an isolated incident. Jena’s most important role is in lending drama and immediacy to a long-standing, worsening problem. National data on racial disparities in our school discipline and juvenile justice systems point to a link between harsh school discipline policies and entrance into the criminal justice system.

The research into racial disparities that show up first in school suspension and expulsion data and then continue unabated in the juvenile justice system is not new. In fact, researchers have been collecting data on disparities for three decades

<sup>1</sup> Brundage, W. Fitzhugh. *Lynching in the New South*. University of Illinois Press. 1993.

<sup>2</sup> See, generally, Ogletree, Charles Jr., and Austin Sarat. *From Lynch Mobs to the Killing State: Race and the Death Penalty in America*. New York University Press. 2006.

<sup>3</sup> See, for example, discussion of restorative models from Great Britain in Wilcox, Aidan and Carolyn Hoyle. *The National Evaluation of the Youth Justice Board’s Restorative Justice Projects*. Centre for Criminological Research. University of Oxford. Youth Justice Board. 2004.

now.<sup>4</sup> Across the nation, black students, black males in particular, get disciplined at rates that greatly exceed their representation in the general school population.<sup>5</sup>

Nationally, black students are 2.6 times more likely to be suspended as white students. As the overall numbers of students being suspended each year increased due to tough zero tolerance policies that became increasingly popular throughout the 1990's, so did racial disparities. In 1973, 6 percent of blacks and 3 percent of whites were suspended at least once. By 2003, those numbers increased to 13.9 percent for blacks and 4.9 percent for whites.<sup>6</sup> In some states, black suspension rates are as high as 25 percent.<sup>7</sup> Black students with disabilities are at even higher risk of both suspension and incarceration. Black students with disabilities are more than three times as likely as white students with disabilities to be removed from school and four times as likely as white students with disabilities to be placed in a correctional institution.

Students who are suspended are three times more likely to drop out by 10th grade than students who have never been suspended.<sup>8</sup> Dropping out triples the likelihood that a person will be incarcerated later in life.<sup>9</sup> Nationwide, in 1997, about 68 percent of state prison inmates had not completed high school.<sup>10</sup>

Juvenile justice data mirror these disparities. In 2003, African American youth were detained at a rate four and a half times higher than their white counterparts. According to these figures, minority youth represented 61 percent of all youth detained in 2003, despite accounting for only about one-third of the nation's youth population.<sup>11</sup> Four out of five new juvenile detainees between 1983 and 1997 were youths of color. According to one study black youths with no prior criminal records were six times more likely, and Latino youths three times more likely, to be incarcerated than white youths for the same offenses.<sup>12</sup>

One of the first steps in discerning the causes for these disparities and the cures is obtaining reliable, consistent data on the problem. For example, depending upon what data source one looks too, Jena High School, in the year 2002, recorded anywhere from 65 out of school suspensions<sup>13</sup> to 0 out of school suspensions, as reported to the Louisiana State Department of Education.<sup>14</sup>

According to the OCR data, at Jena High School in the 2001–2002 school year, 10 out of 45 black females and 10 out of 50 black males were suspended out of school at least once. But just 10 out of 205 white females and 35 out of 225 white males were suspended out of school at least once. This translates into an out of school suspension rate of 4.8 percent for white females and 22 percent for black females, at least according to this data. In other words, black females were more than 4 times more likely to be suspended than their white counterparts. The rates for white versus black males in Jena were 15.5 percent and 20 percent respectively, according to the U.S. Department of Education.<sup>15</sup>

<sup>4</sup> Osher, D., Woodruff, D., and Sims, A. (2002). *Schools make a difference: The relationship between education services for African American children and youth and their overrepresentation in the juvenile justice system*. In D. Losen (Ed.), *Minority issues in special education* (pp. 93–116) Cambridge, MA: Harvard University, Civil Rights Project; Skiba, R.J., and Kesting K. (2001). *Zero Tolerance, zero evidence: An analysis of school disciplinary practice*. In R.J. Skiba & G.G. Noam (Eds.), *Zero tolerance: Can suspension and expulsion keep schools safe?* (17–43). San Francisco: Jossey-Bass. Gottfredson, D.C. (2001). *Schools and delinquency*. Cambridge University Press; Department of Health and Human Services. (2001).

<sup>5</sup> Casella, Ronnie. *Punishing dangerousness through preventive detention: Illustrating the institutional link between school and prison*. In Wald, J and Losen, D (Eds.) *New Direction for Youth Development*. Jossey-Bass: 2003. Balfanz, Robert and Kurt Spiridakis, Ruth Curran Neild and Nettie Legters. *High-poverty secondary schools and the juvenile justice system: How neither helps the other and how that could change* In Wald, J. and Losen, D. (Eds). *New Direction for Youth Development*, Jossey-Bass: 2003.

<sup>6</sup> US Department of Justice. Office of Juvenile Justice and Delinquency Prevention. 2004 Census of Juveniles. Also, U.S. Department of Education, Office for Civil Rights.

<sup>7</sup> Ibid.

<sup>8</sup> Goertz, M.E., Pollack, J.M & Rock, D.A. (196). Who drops out of high school and why?: Findings from a national study. *Teachers College Record*, 87, 357–73.

<sup>9</sup> Coalition for Juvenile Justice. *Abandoned in the Back Row: New Lessons in Education and Delinquency Prevention*. 2001 Annual Report.

<sup>10</sup> U.S. Bureau of Justice Statistics.

<sup>11</sup> Hayward Burns Institute. San Francisco, California.

<sup>12</sup> Poe-Yamagata, Eileen, Michael A. Jones. National Council on Crime and Delinquency *And Justice for Some*. Building Blocks for Youths, Youth Law Center, Washington, D.C. 2000. <http://www.buildingblocksfor youth.org/justiceforsome/>

<sup>13</sup> U.S. Department of Education, Office for Civil Rights.

<sup>14</sup> Louisiana Department of Education. District Composite Report. 2005–2006 LaSalle Parish. March 2007.

<sup>15</sup> U.S. Department of Education. Office for Civil Rights.

Simply because the numbers of students here are so small, it is crucial that we not jump to conclusions about the source of the apparent disparities. But what is clear, is that consistently reliable data broken down by race are vital as we move forward. Most immediately, the question we must ask is: Why do the two sets of data differ so remarkably? Without clear, reliable information about disparities, it is simply impossible to locate potential problems or make sound decisions about potential solutions.

Under the Gun-Free Schools Act, districts are currently required only to report the most serious offenses that triggered suspensions or expulsions.<sup>16</sup> At the least, school districts should be required by the federal government to report suspensions from school, broken down by race, no *matter* the alleged offense since research demonstrates a clear link between suspension and lower achievement and between suspension and dropping out of school and between dropping out of school and incarceration.

Meanwhile, in Louisiana we do know that African American youth are vastly overrepresented in juvenile detention facilities. In 2001, in that state, African American youth represented 41 percent of the overall youth population, but 68 percent of youth in detention.<sup>17</sup>

Experts in criminal justice and sociology offer a range of causes for the disparities and it is undoubtedly difficult to untangle the complex, interconnected sources of the problem. Plausible explanations include inherent and often wholly unconscious racial bias on the part of school officials and actors within the criminal justice system. One research study conducted by Professor Russ Skiba of Indiana found that black students are punished more severely than white students for lesser offenses, such as “disrespect,” “excessive noise,” “threat,” or “loitering” than their white peers.<sup>18</sup> In addition, Skiba’s study on perspectives on school discipline of principals in the state of Indiana found that a principal’s attitudes toward school discipline in general, and the effectiveness of the use of suspensions specifically, played a far greater role in the numbers of students suspended in a school than the actual behaviors of the students.<sup>19</sup>

Such bias, coupled with harsher “zero tolerance” policies in schools, research strongly suggests, leads to black students, particularly males, being suspended, expelled and eventually incarcerated for behaviors and crimes for which their white peers, on average, don’t receive as harsh, opportunity limiting punishments. Meanwhile, a third, related explanation is that the environments in which significant numbers of African American children live encourage a defensive, confrontational, hyper-aroused, but not necessarily dangerous, posture. The most constructive response, especially for younger children, the research suggests, is increased psychological services, family support and sensitized educators—not automatic suspension and/or expulsion, which research shows alienates children from school and often marks a child’s first step toward the criminal justice system.<sup>20</sup>

Of course, Congress has the responsibility to examine whether the educational system in Jena, in particular, which is obligated to provide equal protection of the laws for all children, has violated the rights of students in terms of suspensions and expulsions. Similarly, the same careful analysis and investigation should be applied to the local system of justice there. It’s not enough to assume that the national problem of bias in the criminal justice system is what is at play in Jena. In fact, we know very little about Jena in a larger context. However, given the numerous anecdotal reports about racial bias and the strong perception of injustice that seems to match the experience of many African-Americans in our nation, it seems that alone warrants an investigation. While the facts about what occurred in Jena are predict-

<sup>16</sup> Gray-Adams Westat, Karen. Report on the Implementation of the Gun-Free Schools Act In the States and Outlying Areas. School Year 2003–04. U.S. Department of Education. Office of Safe and Drug-Free Schools. April 2007.

<sup>17</sup> The Hayward Burns Institute. San Francisco, California. <http://www.burnsinstitute.org/dmc/la/>

<sup>18</sup> Skiba, Russell, Robert S. Michael, Abra Carroll Nardo and Reece Peterson. *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*. Indiana Education Policy Center. 2000.

<sup>19</sup> Skiba, Russell; Edl, Heather. *The Disciplinary Practices Survey: How Do Indiana’s Principals Feel About Discipline. Children Left Behind Policy Briefs*. 2004.

<sup>20</sup> See, for example, Massachusetts Advocates for Children. *Helping Traumatized Children Learn. A Report and Policy Agenda*. 2005. Also, Craig, S. *The Educational Needs of Children Living with Violence*. *Phi Delta Kappan*. 74 67–71;68. Pynoos, R.S., Steinberg, A.M., and Goenjian, A. (1996). “Traumatic Stress in Childhood and Adolescence: Recent developments and current controversies.” In B.A. van der Kolk, A. McFarlane and L. Weisaeth (Eds.), *Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society*. (pp. 331–358). New York: Guilford Press; pp. 332, 349–350.

ably in dispute, clearly there is a widely held belief that race played an enormous role in determining who was punished, to what extent, and for what reasons.

One can never fully enter another human being's mind to assess motive or prejudice. However, repeated patterns of disparate treatment, astonishing disparities, and notably harsh, disparate punishments for children of color, should, at the very least, raise a red flag. Racial prejudice is far more difficult to discern these days, but that does not mean it is not there, infecting what are supposed to be objective decisions about whether a child can attend school, whether or not he should be charged with a crime and whether or not he should go to jail.

The immediate lessons of Jena should be clear. A public educational system should not be allowed to punish anyone in disparate ways where it appears to have racial implications. Procedures should be implemented to prevent that from happening. The federal government should provide resources for states and localities to educate professionals about racial disparities and the bias and prejudice that likely plays a role in disparate treatment. Men and women who are elected or appointed to administer the criminal justice system would also benefit from enhanced understandings. The federal government should collect and make publicly available rates of out of school suspension and expulsion, no matter the offence, broken down by racial group. Further, extraordinarily high suspension rates—for example where more than 20 percent of any racial group of students are suspended at least once—signal a school in need that is unlikely to be serving students educational interests if significant numbers of students are losing instructional time. Clearly, we should put in place a system for flagging intervention in such schools and in the schools shown to be suspending half or more of black males more than once. Such schools are pushing children out more than encouraging them to stay in and need support in changing their culture and outcomes.

In our modern times, so much bias lives undercover. For that reason alone, we may never know the full extent of what happened in Jena, Louisiana and exactly why. But we do know that a significant segment of that community, consisting of African American adults and children, strongly believe that the system is patently unfair, and the absence of recourse outside the borders of Jena makes them wonder whether anyone will really pay attention and address their valid concerns after the protesters and media representatives leave their small community. Coupled with the long-standing national data pointing to racial disparities and strongly suggesting the role of bias and the long legacy of racism in our nation, it seems that at the least, we must take their concerns very seriously, as a closer, more careful, consistent investigation that might lead to answers and, most important, to healing and improvements, is clearly called for.

Thank you for this opportunity to testify on this most important matter.

Mr. CONYERS. Thank you so much. Let's look at a situation like this: Schools don't exist in a vacuum. The tensions in them are generally a reflection of the community that they are in. How can we eliminate a racially hostile environment in the Jena schools in light of concerns about a racially hostile environment in the larger surroundings in which they exist? I see a response from you, Professor Ogletree, in that regard.

Mr. OGLETREE. Absolutely, Congressman Conyers. The first thing is that CSR, to their credit, has been going to Jena. That's an important step, but not enough. We have to be there on the ground because people in Jena today think there isn't a problem, that race isn't a factor, that these are all isolated incidents that have no bearing, and that's part of the unconscious bias that we have to address. So I think congressional hearings there to hear how people may not even understand the racial implications.

The second is a broader implication; most of these young men, as Mr. Scott will tell you, are not in school. And in fact, in order for them to continue their education, they are going to have to travel outside of Jena to get an education somewhere else.

Even if we solve the criminal justice problems, if these young men don't get a high school diploma, if they are not on a path toward education and college and professional pursuits, we failed

them in that respect. One final context, the data I have in the report makes clear that those who don't finish high school are more likely to end up in jail and prison; are less likely to have a job and be employable. And so the problem has to be at the root.

And the second part is this: We have to look at the fact that a judge who is able to try a case as an adult case and get reversed by the Third Court of Appeals of Louisiana, then tries the same case, the juvenile case, at least it raises a conflict of interest. A prosecutor who is the head lawyer for the school board who talks about school policy and who should be punished is the same prosecutor who decides the charges in a criminal context. Those are areas where some Federal oversight is important because the State has failed to address these issues in a meaningful way.

U.S. Attorney Donald Washington, do you have a thought about this?

Mr. WASHINGTON. Yes, Mr. Chairman. Generally, you know, when we have conversations last week with the ministers in the community and some other folks, we talked about the very question that you raised. And what we have encouraged them to do, A, is they have to act amongst themselves. This concept of unconscious bias does exist I believe in the Jena community. They have to establish relationships among themselves. So we are assisting and encouraging them to engage in a number of social interaction, the community relations services come up with a plan of action which they have executed over the last several months and which we are in the middle of, in fact, to get to the very question that you asked, how do we move forward from here.

Mr. CONYERS. It is a difficult one. I don't throw this out to get a pop response. I mean, this is the core of the problem, really. What is reflected in the school isn't something different that is reflected probably outside the school. Richard Cohen, would you give a comment?

Mr. COHEN. I think the change is right, that the school exists within the community, but oftentimes, tensions within a school are much worse than in the community. What happens is people in the community have a stylized way of dealing with one another. But in a school, there is a much greater degree of intimate contact—we are in gym class together, eat together, there are raging hormones.

So I think that oftentimes, the situation in a school can be much worse. But it also gives an opportunity to do something that we can't often do with adults. You know, we have that captive audience in school and we can bring people together and educate them. That is kind of the whole idea behind it. I must say that think in Jena, they missed many opportunities to open a dialogue with the community. The way the Black parents were treated at the school board really shut down dialogue rather than opened it up. And the last thing I note, Mr. Chairman, is I think it is going to be very difficult in Jena to resolve the larger community problems until there is justice in these cases, until these cases are resolved. I think they are now a symbol of the larger injustices that are going on in Jena.

Mr. CONYERS. Reverend Moran and Ms. Krigsten, do you have a comment? My time is almost out.

Reverend MORAN. Primarily, yes, I do agree with him. The injustices that has taken place in the school systems must be resolved before anything will take place in the community. Because the eyes of the community are upon the rulings of those citizens in the school system and until that is done, I don't believe we'll be in a healing process.

Ms. KRIGSTEN. Mr. Chairman, I want to take this opportunity to echo the statements of my colleague, Mr. Washington and indicate that the Department of Justice has committed its resources to a holistic approach to what is occurring in Jena. At this time, I do want to note that one of the steps the Community Relations Service is taking is to start a particular school program called the SPIRIT program inside the Jena school to address these very issues that you and other Members of the Committee are concerned about.

Mr. CONYERS. Thank you very much. Ranking Member Lamar Smith.

Mr. SMITH. Thank you, Mr. Chairman. Mr. Washington and Ms. Krigsten, thank you for your testimony, particularly the more written extensive testimony you submitted. And I certainly hope that any Member of Congress that questions how much the Federal Government is doing will take advantage of reading your testimony, and also, perhaps, talk, as I understand, to the director of the community election service who is sitting behind you.

I know much is being done on the ground and there is no substitute, frankly, for the footsteps of those in the Federal Government to reassure people. At the same time, while everything you are doing, I think, is worthwhile and needed, we need to remember to respond to some of the suggestions by Professor Ogletree that it is not just enough to be there, some policies have to change as well. Anyway, thank you for your testimony. But what I wanted to ask you, do you think the environment is changing? Do you think there is an improvement in the way people see racial injustice in Jena now as a result of your efforts?

Mr. WASHINGTON. I'll start to answer that question. My gut tells me yes. And the reason I say that is because a number of them have indicated that they never thought that their fair city would be held up to the world as an example of a racist city. And they never thought they'd have somewhere between 12,000 and 60,000 people show up in their city at one time. Having said that, they are struggling with coming up with ideas as to how to move forward. We are working with them as I said before, the community relations service through my office and through the civil rights division to help them come up ways to move forward. We're considering, you know, how do we get, for example, different types of funding perhaps, for programs that they may come up with to assist with the kind of interactions that simply need to occur in that city.

Mr. SMITH. Thank you, Mr. Washington. Ms. Krigsten, do you have anything to add to that?

Ms. KRIGSTEN. I do want to add there is a healthy dialogue taking place in Jena at this time. Mr. Washington was joined by the Civil Rights Division and the Director of the Community Relations Service in Jena last Friday, and they had a dialogue with members of the clergy and other leaders in the community. And based on reports of those meetings, the dialogue continues and things are

slowly getting better, much with the assistance and guidance of the Community Relations Service, which continues to provide active support in that community.

Mr. SMITH. Thank you. Mr. Cohen, thank you for your testimony. I really thought it was balanced and I thought you had a couple of solutions I want to read in a minute because you did not get to them I don't think in your oral testimony. But I also appreciate your saying something today that frankly maybe needs to be said a little bit more often. You said we do not excuse violence of any kind or minimize Justin's injuries in any way. Our hearts go out to him and his family. And the point of fact that is often overlooked, a brutal and unprovoked attack occurred and apparently it was perpetrated by an individual with a long criminal history. I don't think we ought to make light of that in looking at the bigger picture, but I appreciate your mentioning that. I also appreciate your making two suggestions on solutions. You said we should increase Federal investment and services designed to soothe the racial and ethnic tensions simmering in our Nation's school and respond promptly when hate crimes occur. You also said the Federal Government working with experts in the field can help officials like those in Jena work toward the goal of creating schools where all students feel physically and emotionally safe. Those are wonderful goals. It is a challenge for Members of Congress to implement policies for the American people wherever they are located to achieve those. I don't have time for Congress because I wanted to make a comment to Professor Ogletree.

First of all, Professor, in your bio that we had before us it says that you began your career at Harvard Law School in 1919. Now, I know——

Mr. OGLETREE. That's Charles Hamilton Houston, not me. That's the other Charles.

Mr. SMITH. I know you're a wise man, but I didn't know you were that experienced is my point. Professor, what I wanted to say to you—I actually want to read something from your written testimony that you did not, I don't think, mention in your oral testimony. With more than 3,000 people lynched from the late 1800's to the early 1900's, children often attended such events as if they were carnivals. A noose today is a powerful symbol of American White supremacy and pure barbarism.

Given the context, a noose, particularly to an African American who knows his history, is nothing less than an expression of hatred. Moreover that the students responsible for hanging the now infamous nooses in Jena are unable to appreciate the significant brutality of such an act, that lack of understanding should be addressed for the good of the collective community.

Professor Ogletree, it is not easy for us to put ourselves in the shoes of others, but I believe you have crystallized as well as it can be written, not necessarily felt. And your comments there, I think, need to be taught in the classrooms, they need to be—views exchanged among parents and they need to be remembered by the Members of Congress when we get to the point of creating additional policy. So I wanted to thank you for your testimony, and Mr. Chairman, my time is over.

Mr. CONYERS. Thank you so much. The Chair recognizes a senior Member of the Judiciary Committee, the gentleman from California, Howard Berman.

Mr. BERMAN. Thank you, Mr. Chairman. I was wondering if—there is a discordant two themes that sort of run against each other in this, and I'm wondering if you could, Mr. Washington, perhaps, or Professor Ogletree or Mr. Cohen or Reverend Moran, resolve this for me. On the one hand, we hear about all the efforts going on now for dialogue and reconciliation, the work of the community relations service. And at the same time, we hear that the people of Jena and the leadership of Jena thinks of this as childish pranks, not something fundamentally indicative of racist views and feelings. Professor Ogletree talks about the benefit of people learning the symbol of this noose or the history of lynchings in the south, the full implications of what that meant. Are these efforts at dialogue dealing with that? And if these dialogues are taking place, why is this view held that the people of Jena don't—and the leadership of Jena don't fundamentally feel there is anything wrong? I'd also like to hear from the people involved in coordinating this effort.

Mr. OGLETREE. I'll make a brief comment. It reminds me of Harriet Tubman who was responsible for freeing so many slaves from the south to the north and her famous statement was I could have freed a lot more if they realized they were slaves. And I think that tells us something about what is going on here. There is the unconscious bias that people don't realize there is a problem. And I think that what is going on is good, but I would actually look forward with this Committee's support to joining Mr. Washington in Jena and other places to have a dialogue and talk about the history of lynchings. It is not the children. It is the families, the community. If you don't recognize you have a problem, you can't begin to address it, which is one of the major aspects. And the second part is that I agree that there is a victim in this case who was brutally beaten, that the individuals who have been charged aren't saints or martyrs. They are young kids who are involved in conduct that needs to be addressed.

I think the fact that we've ignored the community's problems is what created this opportunity for disagreement. And I think what Richard Cohen and others are doing—I think that we can do something that we have expertise in to teach people how to think about race in ways they probably have never thought was necessary. It is not just Mychal Bell scored the touchdown on the football field which they'll all applaud, but seeing him as a young man that is more than the sum of the crime with which he has been charged.

Mr. BERMAN. Mr. Washington?

Mr. WASHINGTON. The conflict of which you speak is, of course, not new. It exists all over the country in my humble opinion. What we told the Jena folks in our first education forum earlier this year was that in these kinds of things, good people have to stand up and do the right thing and articulate very clearly what is right and what is wrong. What didn't happen in the Jena community when the nooses were hung was just that. So now we move forward with this idea of how do we solve this—how do we go back in time,



which we can't, but how do we—if this happens again, get people to say these kinds of things are wrong.

I think Professor Ogletree is exactly right, that we have to keep talking about it, keep pushing it. We can use the criminal justice system to a degree, but at the end of the day, as the blunt instrument which is really not appropriate for a long-term resolution in communities like Jena. So this is going to be a little bit of an experiment for us, at least in my office and in the civil rights division, but not in CRS, I don't think.

Mr. BERMAN. Let me just ask you. I only have another few seconds. Put aside the issue of juveniles. In your view, is the act—is this act of hanging the noose a hate crime?

Mr. WASHINGTON. Yes, It is a hate crime.

Mr. BERMAN. Under existing Federal law?

Mr. WASHINGTON. Under existing Federal law. We have—I think we have stated that publicly. And we've not all been in agreement as to how strong the evidence is to support the elements and move forward. But, yes, hanging a noose under these circumstances is a hate crime.

Mr. BERMAN. Thank you.

Mr. CONYERS. The gentleman's time has expired. The Chair is now pleased to recognize Howard Coble, who has been on the Committee for quite a while, and he is from North Carolina, and we welcome him for his questions.

Mr. COBLE. Not as long as you've been on the Committee, Mr. Chairman. Thank you, Chairman. Thank you all for being with us as witnesses. Racial disharmony serves no good purpose. Mr. Chairman, I'm going to make a certain statement here. If I were compiling a group of witnesses to encourage the diminishing of racial disharmony, I don't think that Mr. Sharpton would have made my cut. But that is a personal opinion, Mr. Conyers. Good to have you all with us.

Mr. CONYERS. He may be here shortly.

Mr. COBLE. They may be looking for him. Americans of goodwill prevail in both communities, the African American community and the Caucasian community. Unfortunately, there are troublemakers, enticers of tension, Americans of bad will in both communities. But Mr. Chairman, I believe the latter group does not constitute the majority.

Ms. Krigsten, are there any suggested potential regulations that the Department of Education might issue to help address some of the problems discussed today are to prevent future such problems from occurring?

Ms. KRIGSTEN. At this time, I'm not able to speak directly to the Department of Education. My expertise is with the Justice Department where I've been employed for the last 7 years. What I can tell you, Congressman, is that the Civil Rights Division's Educational Opportunities Section is actively involved in this case. There is a Federal desegregation order in place in the LaSalle Parish and the Educational Opportunities Section has taken it upon itself to initiate a review of that desegregation order. That review will be comprehensive. It will look at all parts of the school, and at that time, it will determine whether appropriate relief is needed.

Mr. COBLE. I thank you for that. Mr. Washington, how many students were involved in the hanging of the nooses?

Mr. WASHINGTON. There were two students who hung the nooses and one assisted by driving there. So three.

Mr. COBLE. Was the student who was the victim of the battery or the schoolyard fight, was he one of the ones that hung the noose?

Mr. WASHINGTON. No, sir.

Mr. COBLE. Now, one of the—one of the members of the Jena 6 was tried initially as an adult, is that not correct?

Mr. WASHINGTON. That is correct.

Mr. COBLE. That is ongoing now as a juvenile matter?

Mr. WASHINGTON. As far as I understand, that's correct.

Mr. COBLE. Reverend Moran, let me ask you this. Has the Federal Government helped local officials who are trying to, for want of a better way, of keeping this thing from spinning out of control?

Reverend MORAN. From my understanding partially. But there is a cry for peace, love and harmony, but there is not a cry for justice. There is justice. We talk about getting dialogue, we talk about us meeting one another, Black ministers and White ministers, but we don't talk about the justice and the injustice taking place now.

Mr. COBLE. Mr. Cohen, do you want to add—you or the professor want to add anything to this before my time expires?

Mr. COHEN. I think Reverend Moran is much closer to the situation there and, you know, I'm sure he has an accurate view of it.

Mr. COBLE. Professor, I'll give you—professors always get the last word.

Mr. OGLETREE. I doubt it. But I will say that your question raises an important issue and that is part of our suggestions here is to simply not have dialogues but to use those dialogues to think about some ways to modify our Federal law. One thing I mentioned in my written testimony is look at the Gun Free Schools Act which was designed to look at weapons used in school data. The reality is that there are a lot of people that were suspended for crimes not involving weapons and the question is whether or not the laws that you have passed are being used in ways that show unequal application to Blacks and Whites.

So I would say look at the data. And I think even the idea that you're going to change the law to look at who is being suspended, I bet it will change. I bet there will be a remarkable change when they realize that someone is paying attention to why a child is removed from school rather than dealt with inside the school. I think that is a very good thing you could do and others could do on this Committee.

Mr. COBLE. Thank you, Professor. Mr. Chairman, I want you to take note that I'm yielding back prior to the illumination of the red light.

Mr. CONYERS. The Chair takes note. Without objection, the testimony of Reverend Jesse Jackson of Rainbow Push will be entered into the record.\*

And the Chair recognizes the Chairman of the Constitution Subcommittee of the Judiciary Committee, Jerry Nadler of New York.

---

\*The information referred to was not received prior to the printing of this hearing.

Mr. NADLER. Thank you. My first question goes to Ms. Krigsten. You've testified and we have plenty of reports that Federal officials examined how Jena High School administrators administered discipline. These officials did not find it unusual that the students responsible for hanging the nooses were disciplined only with suspensions. Punishments that were awarded by the school superintendent to overrule the principal's original expulsion recommendations. Did Federal officials find that the decision to expel the Jena 6 for a school fight was a proper and equitable punishment?

Ms. KRIGSTEN. As you mentioned, there was immediate discipline in this case after the students who hung the noose were identified. One of the things that the Department is doing is reviewing that discipline in light of other discipline that has been meted out in other situations. So the first part of my answer is that the Educational Opportunities Section in their review of the Federal desegregation order will be looking at this variation. The second thing that I want to point out is that the Federal—the decision not to pursue charges in this case was not based on a decision whether expulsion versus suspension was the appropriate penalty. The judicial system did not ever reach that particular issue.

Mr. NADLER. Thank you. Now title 4 of the Civil Rights Act prohibits discrimination by public elementary and secondary schools and public institutions of higher learning. In a meeting with Members of Congress, several Jena parents complained that the LaSalle Parish school board did not respond to their complaints about the racial climate at the high school. Has the Civil Rights Division opened a title 4 investigation to determine whether there is a statutory Federal role in calming the racial climate at the school?

Ms. KRIGSTEN. At this time, the Civil Rights Division is using all of the tools at its disposal to address issues in Jena. One of those tools, as I've mentioned, is a review of the Federal desegregation order. At this time, that is the step that the Department is taking to review all of the issues surrounding the school. If it is discovered that are violations of that order or additional violations of law, the Department will take appropriate action.

Mr. NADLER. Thank you. Mr. Washington, in your testimony, you stated that the Department declined to pursue charges in the Jena High School noose incident after learning that the nooses had been hung by juveniles. Earlier reports indicated that the Department did not bring hate crimes charges because the incident failed to meet the "threat of violence required." For the record, can you please state did the noose incident meet the Federal hate crime requirements, and but for the offenders being juveniles, might hate crimes charges have been pursued?

Mr. WASHINGTON. Yeah, I think you might be reading an old media report where some misunderstanding occurred there was discussion about the elements of a hate crime given this particular circumstance and we had disagreements over the strength of the element, the evidence to support various elements of the crime. To answer your question directly, if these acts has been committed by others who were not juvenile, this would have been a Federal hate crime. We would have moved forward at the end of the day we still

would have had to make a disagreement over the strength of the evidence. But nevertheless, it would have moved forward.

Mr. NADLER. Thank you. I have two other questions for you. The Jena situation has spawned a series of other incidents, a truck driven on the roads trailing nooses for instance was reported. Are there other Federal statutes, other than 18 USCA 245 that we referred to a moment ago that could be used to prosecute hate violence?

Mr. WASHINGTON. Yes. There is a series of statutes under the United States code, among them include 18 USC 241, 242, 245, 247 for church property and things of that sort. So, yes, there are, sir.

Mr. NADLER. And finally, do you think that there is anything that we can do in strengthening those? In light of your investigation of everything, should Congress amend or strengthen these existing statutes?

Mr. WASHINGTON. I think two things have to occur first. First, what is occurring inside the civil rights division is that we're asking ourselves those same kinds of questions. I'm sure the Department of Justice will bring those ideas to Congress as they blossom. And secondly, of course, any ideas that this Committee might have, we'd certainly entertain them or take them back and review and discuss them for—

Mr. NADLER. Thank you, Mr. Chairman. Just before my time expire, I simply want to note that we've been joined from someone from my city, a very distinguished citizen and witness, the Reverend Al Sharpton.

Mr. CONYERS. Thank you very much, Mr. Nadler. We do have Reverend Sharpton here. I suppose you have an excuse for your tardiness and that you are present because you do wish to make a statement. And because of that and because of your work and the fact that you have been to Jena and have been working not only with the Federal Government, but the State and local government, but more importantly the people of Jena and the children at the school, we're delighted to have you here today and we'd ask that at this point you give us your statement.

#### **TESTIMONY OF REVEREND AL SHARPTON, PRESIDENT, NATIONAL ACTION NETWORK**

Reverend SHARPTON. Thank you, Mr. Chairman. First let me apologize. I've been on the tarmac in New York for the last 2 hours. So it was the airlines, not me that is responsible. But I realize that this Committee doesn't have oversight over the airlines, so I won't belabor the point. First let me say that I wanted to come today, along with Martin Luther King, III, and the lawyers for Mychal Bell because we are—among other groups, asked this Committee to hear because we think this is a serious problem that goes beyond demagoguery and profiling. I was called in the summer by the parents of Mychal Bell who asked me to come to Jena because they felt their son had been treated unjustly. And we responded to that call.

They felt that the government in Jena, the State government in Louisiana, as well as the national government did not hear their cry. Any time we are in a situation where young people of the same age face different levels of justice, then we are experiencing in our

opinion the undermining of the constitution and certainly the drawback of the dream that many of us fought for and continue to fight for. It seemed inconceivable to us that young people could be charged as adults but other young people could not be charged at all. When you have a system set up where you are too young to be charged with a bias crime, but you're the same age and can be charged as an adult for attempted murder, that speaks to some level of the justice system having to address that. And when they were given a court appointed attorney that did not raise that, they were later able to get Attorney Scott, who sits behind me and Attorney Lexing-Powell, who sits behind me and able to successfully bring that into the third circuit and overturn the adult conviction of Mychal Bell after serving 10 months in jail.

But I would beseech this Committee to look into the fact that there are Jenas all over the country. It's the hangman nooses at Columbia University in New York. There is even a hangman noose at the site of 9/11. It's in North Carolina. It's in California. All kinds of reports. And what has been most troubling is the silence of the Federal Government in the face of this.

Now, this is bipartisan. In the Republican administration of Dwight Eisenhower, Dwight Eisenhower sent the government into Little Rock. John Kennedy sent in the Federal Government and the justice system was involved. So did Lyndon Johnson. What has happened in Jena and what has happened all over this country, we've not heard one Federal response. It is almost like the national government is not in the country while we're watching nooses on the news every night, while we're watching hate crimes. And if we can't appeal to the Federal Government, where can we go? It has been rationalized by those in Jena some that these nooses was a prank, a prank to who? Grandchildren of people who saw their grandparents hanging on nooses? If there is a pranks, if there is a joke, the joke is if we could represent to the world that we're the land of the free and home of the brave, but we can't protect youngsters in Jena, Louisiana, and we can't stop people from hanging nooses and our Federal Government after 50 years of bipartisan tradition of protecting people from States rights has now decided it can no longer protect people from States that decide they can prosecute some 16 year olds if they're Black as adults but can't prosecute other 16 year olds if they're White, same age, but they qualify as juveniles, do we want harmony? Absolutely. Do we want the races to come together? Absolutely. But you cannot achieve racial justice by getting a premature racial quiet.

There is a difference between peace and quiet, Mr. Chairman. Quiet means shut up and allow a two-tier justice system to continue to exist. Justice means we must have an even playing field and the Justice Department at the behest of this Committee needs to step into Jena and the Jenas of this country and establish that the Federal Government is still in charge and the States did not win the Civil War. Thank you.

[The prepared statement of Reverend Sharpton follows:]

PREPARED STATEMENT OF REVEREND AL SHARPTON

Good morning Mr. Chairman and members of the Judiciary Committee. On behalf of the National Action Network and its Chairman Reverend Dr. Franklyn W. Richardson, Jr., and individuals throughout this great nation of ours who face the awful

prospect of pursuing the American dream while confronting the nightmare of bigotry and racism, I thank you for conducting this hearing today.

Joining me are Martin Luther King III, a respected civil rights leader in his own right and the son of Dr. Martin Luther King, Jr., and Charlie King, former candidate for New York State Attorney General and Acting National Director of National Action Network. It is because of the seeming continued miscarriage of justice in Jena that I and other civil rights leaders requested these congressional hearings and federal government intervention in this very troubling case.

At the outset of my testimony, it is important to note that for the last fifty years, federal protection of civil rights over parochial states' rights has been a bipartisan effort that has improved and united our country. When the "Little Rock 9" school-children needed the federal government to ensure that they could go to an integrated public school, it was Republican President Dwight Eisenhower who protected their civil rights, and our national education system improved. When Blacks in the South in the '60s sought to exercise their civil rights in the voting booths, at lunch counters and in interstate transit, Democratic Presidents John F. Kennedy and Lyndon Johnson ensured those rights were

exercised and protected, and we began to grow together as a society.

And now, just as when Dr. King and other civil rights leaders in Dr. King's time urged the federal government to step in when local governments either could not or would not halt an onslaught of racism and bigotry, we are here today to urge the federal government to intervene in Jena and in all the other towns like Jena throughout our country. We are here today to ask the federal government to help us put an end to the dramatic increase in hate and bigotry taking place throughout the nation.

Hate crimes are on the rise throughout the land. A noose was hung on the Ivy League door of a Columbia University professor last week, another noose was left in the bag of a Black Coast Guard cadet, and yet another noose was found on the office floor of the officer who was investigating the situation. Last month, nooses were hung on a tree on a Maryland college campus, in the Long Island police department, in several places in North Carolina, and on a utility pole at the Anniston Army Depot in Alabama. In Ft. Pierce, Florida and Palmdale, California youth faced racially charged instance of excessive force by security guards and the police. In Florida a young African American girl was violently punched and sprayed by a police officer and in California a three students were overzealously arrested with force and called "nappy headed." There are also the Martin Lee Anderson and Genarlow Wilson cases, and just last Sunday, a Black high school football team from Harlem, NY went to play an all white team in Staten Island to find the "N" word scrawled on their team bench.

For those who think these assaults do not affect them because they either do not live there or they are not a person of color, they are mistaken. When Dr. King was alive he said over and over again that injustice anywhere is a threat to justice everywhere, and he was so correct in preaching this that he lost in life in this cause. When the civil rights of one person are violated, that violation affects the moral fiber of our country and raises the possibility that the civil rights of any one of us could be violated as well.

Civil rights violations unchecked and not responded to also damage our country's standing throughout the world. I have just returned from an international conference of Caribbean leaders and heads of state where we all watched on television images and discussion of nooses and the tragic obvious increase in hate crimes in America.

Nooses, the "N" word, a Klansman's hood, and the burning cross are the clearest symbols of hate for Black America.

Some down in Jena have called the hanging of nooses from a schoolyard tree a "harmless prank." But if the Jena noose hanging is a prank, then this cruel joke is on our entire nation, because our federal government and we have been unable or unwilling to protect civil rights in the tradition of Presidents Eisenhower, Kennedy and Johnson.

As the President of National Action Network, one of the leading civil rights organizations in the nation and as a former candidate for President of the United States, I have seen firsthand grave injustices throughout this country. I have worked with victims of police misconduct and brutality and with other individuals who have been subjected to other civil rights abuses. In all of those cases, whether I agreed or disagreed with the ultimate outcome, I never once believed that our government, our laws or our judicial system were being used as instruments of bigotry or racism, or that they were incapable of correcting civil rights abuses.

But that has changed with the events in Jena, in Georgia with the Genarlow Wilson case and in Palmdale, California. These cases cry out for the need for federal

jurisdiction and enforcement because local efforts have either failed or been purposely obstructed.

In the interest of time I will devote my testimony today to the ongoing tragedy and abuse in Jena, Louisiana.

In Jena, I believe that we have witnessed, and are continuing to witness, a state judicial system that has not protected the civil rights of six African American boys, the "Jena 6", and this breakdown has had a chilling effect on the civil rights of all Jena residents and, by extension, on the civil rights of all of us. For those who are properly outraged by the acts of the prosecutor in the Duke case, the prosecutorial actions in Jena should invoke a similar response. Jena has a renegade prosecutor who has: overcharged the Jena 6 with attempted murder for their involvement in a school fight without weapons where the injured person went to a school event just hours after the fight; caused Mychal Bell to serve ten months in an adult prison due to his wrongful prosecution of Mychal as an adult; and kept Mychal in an adult jail without the possibility of bail even after Mychal's conviction was overturned.

There also seems to be an abuse of judicial discretion in Jena. The court there has permitted the overcharging of the Jena 6 with attempted murder, allowed their prosecution as adults rather than as juveniles, and then refused bail requests of any amount for Mychal after the appeals court had overturned his conviction. The court subsequently re-arrested Mychal because of an alleged violation of his parole and sentenced him to 18 months. Mychal is incarcerated again today as we have this hearing.

But the breakdown of the state system in Jena goes beyond the horrible specifics of this case. The prosecutor and judge are the same for both the adult and juvenile courts, which means that if there indeed was prosecutorial misconduct and abuse of judicial discretion in the adult Jena 6 cases, then that very same misconduct and abuse will follow the Jena 6 in their juvenile cases. Although I am not a lawyer, I believe this is a classic and unacceptable conflict of interest. Another conflict of interest is that the prosecutor also was counsel to Jena high school and thus played a role in the modest punishment meted out to the white students who hung the nooses and who precipitated this entire travesty.

Further, assuming that there are violations of civil rights occurring in the juvenile court system of Jena beyond the Jena 6 case, we will never know about it, because these proceedings took place behind closed doors and in secrecy. I am not advocating that such proceedings transpire in public, but if the state juvenile system is fraught with civil rights abuses, then it is hard to identify those abuses without federal safeguards and protections.

Not every case receives national attention, and not every family has Al Sharpton or Martin King on their side in a civil rights dispute. In 2004, law enforcement agencies reported nearly 5,000 incidents that were motivated by racial animus, and nearly 70% of those were directed at African Americans. In addition, 12% of all children claimed to have been victims of hate crimes. But, as the Southern Poverty Law Center in Montgomery, Alabama states, even these dramatic numbers are likely grossly underreported.

I believe the time is now for federal intervention to protect these civil rights. And the focus of this intervention should be in three areas: expanded jurisdiction over hate crimes; better federal protection against prosecutorial misconduct and abuse of judicial discretion; and quicker legal federal intervention mechanism in civil rights cases where local courts are not protecting or cannot protect the civil rights of the parties involved.

Even though three white Jena high school students indisputably hung nooses from a school tree, the United States Attorney who is testifying today has been on record stating that he could not prosecute those students under current federal hate crime statutes. Putting aside for the moment what other statutes he could have utilized had he chosen to, it is clear that, if our criminal justice system can—and does—prosecute 16 and 17 year olds for certain crimes, then those crimes should include hate crimes.

When it comes to prosecutorial misconduct, it does not make sense to me that a prosecutor like the one in Jena can overcharge Black students in a schoolyard fight, never even charge the white students who engaged in the hateful conduct that caused all of these problems, and then have his conduct escape any scrutiny for prosecutorial misconduct. There has to be a way to deter local prosecutors from engaging in the blatant disparate treatment of people who come before them based on race.

Abuse of judicial discretion must also be examined. A court system that believes it is impervious to scrutiny opens the door for the type of abuse that is taking place in Jena. It is my opinion that there is absolutely no way that the Jena 6 can enjoy a fair trial before this local judge who has even gone so far as to hold a juvenile

in an adult prison without bail on charges that were overturned by a higher court while the prosecutor took an unreasonable amount of time deciding whether to appeal. Again, this type of abuse, unchecked, sends the message to everyone in Jena and throughout our nation that the court system in Jena is there to thwart justice, not protect it.

Finally, there must be a way for the federal government to intervene when civil rights are being violated but the conduct of the local prosecutor or judge does not fully rise to the level of misconduct or abuse.

Since I am not a lawyer, I leave it to Professor Ogletree and others to fashion the appropriate statutory remedies, but I do know in my heart and in my mind that federal intervention in Jena and many of these other cases is warranted.

Mr. Chairman, at this time of urgency in the field of civil rights, I hope your Committee hearing today will prompt Congress and the President to make their marks in civil rights alongside those of Presidents Eisenhower, Kennedy and Johnson. With respect, we do not need any more silent witnesses to civil rights infringements and abuses.

Thank you for this privilege.

Mr. CONYERS. Well, I thank the gentleman. And I remind him that he is in the Federal Government right now before the Judiciary Committee, who, I think, has responded in quite a timely manner and it is toward the end that the gentleman seeks to have happen is what we are here today to develop.

Reverend SHARPTON. Well, I thank you for that timely response and I know this is the first response of the Federal Government, and I think all of us are appreciative for the entire Committee, and I note Mr. Coble's welcoming of my presence.

Mr. CONYERS. And let us begin to re-examine, and I'm not sure if you had the benefit of what I thought was some excellent discussion, but let us begin to re-examine what precisely it is, and I'm sure this will come out in further questioning and discussion with you. What is it that the Federal Government is supposed to do and is going to do? And now going back into the regular order, let me just ask a question. Could I seek the indulgence of my colleagues here, Mel Watt is going to be replacing me on the floor because we have Judiciary legislation, but I wondered if my colleagues would agree to go next?

Mr. LUNGREN. I'm not sure he can replace you, but I'll be standing in your stead.

Mr. CONYERS. Okay. All right. Very good. The Chair recognizes the gentleman from North Carolina, Mr. Mel Watt.

Mr. WATT. I thank my colleagues on the other side, and I thank the Chair, I guess the lesson to be learned from that is that no good deed goes either unpunished or unrewarded. So I'm going to go shortly and substitute for the Chair on the floor in connection with another bill. It seems to me that we have danced around a question of—quite a lot this morning that Reverend Moran seems to put his finger directly on. And that is the fact that there has been a lot of discussion about reconciliation and very little discussion about justice. And until this pending dispute is resolved in some way, it is going to be difficult, hard, if not impossible, for the Jena community to move forward in any kind of constructive way.

So I guess the question I want to focus on is what, if anything, can we do, given the recognition that everybody on this panel seems to have that there were two standards being applied. There still seems to be two standards being applied. The prosecutor is still out there charging on a different standard. The Black kids, not having charged anything against the White kids. Is there anything



in the current posture of the case that the justice department can do or do we have to just wait on an irresponsible insensitive prosecutor to continue to play this out for his own political benefit, I'm told, while the Nation is trying to reconcile, he is trying to be a hero.

Is there anything that we can do in this context in this case to get this prosecution resolved so that we can start to try to reconcile? And I would address that question first to the representatives from the Department of Justice and then to the learned counsel on the panel.

Ms. KRIGSTEN. One of the things I want to make sure our testimony does here today——

Mr. WATT. I want to make sure that we answer the question.

Ms. KRIGSTEN. Yes.

Mr. WATT. I've got your testimony. I don't see an answer to this question in your testimony. So——

Ms. KRIGSTEN. The answer to the question is this. The Department of Justice has been active in the Jena community. There has been an immediate response by the Department of Justice and continued response to address all of the issues in the community. When looking at the issue that you bring to the table at this time, the Department of Justice is aware that there are requests to investigate the judicial system in Jena. Just last Friday, Mr. Washington was joined by the head of the Civil Rights Division in discussions with community leaders, and that is one of the topics that was brought to our attention.

At this time, the Justice Department is gathering information and reviewing that information and is taking that request about whether there needs to be an investigation into the justice system very seriously. At this time, there is an ongoing criminal prosecution, and it would be premature for the Justice Department to say at this time whether there will be an investigation.

Mr. WATT. Mr. Cohen, Mr. Ogletree, in our criminal context, in our justice system, are we just stopped at this moment until some irresponsible "prosecutor" plays out his own political agenda?

Mr. WATT. Would you put your mike on, please?

Mr. COHEN. I think it is on. We hope at some point that cooler heads do prevail. Unfortunately we live in a Federal system and it is very difficult to bring a selective prosecution case and stop a prosecution in its tracks. I know that Mr. Scott, Mr. Bell's lawyer, and many of the other lawyers are trying to file motions to recuse the district attorney. They've been unsuccessful so far. I think there will be motions filed to change the venue and get the case out of Jena.

I can't imagine that those won't be granted. You know, ultimately, the wheels of justice grind slowly unfortunately. They're going to go through the Louisiana appellate courts. And if there is not justice there, there will be Federal habeas actions brought. I just hope that the kids, in the meantime, can bear up. But I think it is not an obvious thing that we can short-circuit that by some sort of Federal intervention unfortunately.

Mr. WATT. Thank you, Mr. Chairman. I thank the gentleman on the other side for allowing me to go out of order and I'll go handle the Chairman's business now.

Mr. CONYERS. And I thank the gentleman from North Carolina. The Chair now recognizes Dan Lungren, I'm sorry, Bob Goodlatte of Virginia, a distinguished Member of the Judiciary Committee.

Mr. GOODLATTE. Thank you, Mr. Chairman. I'll be following Mr. Watt to the floor momentarily on the same issue which you well know. And I also want to thank you for holding this hearing. And I also want to say, and I think I can say this on behalf of everybody on this Committee on both sides of the aisle, that we all stand for equal justice under the law. And I think this is an appropriate hearing to determine the facts behind what occurred in Jena and what can be done to avoid similar circumstances in the future.

So in that regard, I'd like to follow up on the questions that were addressed by Mr. Watt and to Ms. Krigsten and Mr. Washington, perhaps get you to be a little more precise with us if you can. And that is to ask each of you, in your opinion, what do you think were the appropriate charges to be brought against the Jena 6 members with regard to the assault on Justin Barker?

Mr. WASHINGTON. Congressman, we have done what we can as hard as we can not to come up with opinions regarding prosecutorial discretion and things of that sort in this particular case. What we can say—

Mr. GOODLATTE. I'll give the other members of the panel an opportunity to answer too. So I want you as the representative of the Justice Department to have first crack.

Mr. WASHINGTON. I understand. What we can say there is an loud outcry in the community that these charges are overboard, and we've taken that into consideration and we'll continue to take that into consideration as we move forward with our processes.

Mr. GOODLATTE. Ms. Krigsten.

Ms. KRIGSTEN. At this time, I can simply echo what Mr. Washington has said. There has been an outcry. We have received the message from the Members of this Committee and from the American public that people are not pleased with the charging decisions. At this time, the Justice Department is not going to express an opinion whether or not those charges were appropriate or not appropriate because it is an ongoing prosecution; and because we are considering the request of whether to investigate the district attorney.

Mr. GOODLATTE. Let me ask you a second question, and then I'm going to give the other members of the panel an opportunity. Based on your knowledge of the facts and circumstances surrounding the racial tensions and actions that occurred in the Jena community, do you believe that any additional charges could have and should have been brought against any other parties in Jena?

Mr. WASHINGTON. We've taken the same kind of decision so far, Congressman. We are in the process of evaluating all of the rumors and innuendo and information. We continue to collect information to answer that—those kinds of questions as we move forward. As has already been indicated by Mr. Cohen here, when you start talking about selective prosecution and things of those sort, we have to be very precise in the kinds of evidence that we need to collect and we have to do it in a very deliberate, careful fashion.

Mr. GOODLATTE. All right. Bearing in mind the circumstances you find yourselves in, with an incomplete process, let me then ask

you maybe an easier question. That what should we be doing to ensure that our criminal statutes are more uniformly enforced?

Ms. KRIGSTEN. One of the things that I think is important for us to note at this time is that in talking about these incidents in Jena, we're talking about two independent judicial systems. We're talking about the State system and the Federal system. As a Federal prosecutor for the past 7 years, in fact, a prosecutor for my entire career of 12 years, I am very familiar with the idea that there needs to be uniformity in the application of law. But the uniformity of which Mr. Washington and I are concerned is the uniformity in applying Federal law. And in this case, we believe that we are operating under the correct principles of Federal prosecution. There is a concern about how the State system is making their decisions. And it is important for us to draw this distinction because it is not our concern as Federal prosecutors that there is uniformity between the Federal system and the State system.

Mr. GOODLATTE. Let me pass those questions on down the line. Mr. Cohen.

Mr. COHEN. Probably simple battery would have been more than sufficient. My microphone seems to be having a problem. I have—I think simple battery would have been more than sufficient. Aggravated battery, of course, requires both serious injury and a dangerous weapon. I don't want to minimize any injuries here. Everyone knows Mr. Barker left the hospital under his own power with no broken bones and no stitches. Also that the dangerous weapon here was tennis shoes. One can always claim that anything can be used in a dangerous fashion. But I think that simple battery would have been more than sufficient under the circumstances here.

Mr. GOODLATTE. Thank you. Reverend Sharpton.

Reverend SHARPTON. I would—as not being one of the learned counsels at the table, I wouldn't even venture to guess what would be appropriate. I think it would be appropriate that there should have been some kind of penalty on a juvenile level if, in fact, it occurred. I think that what I would like to address is the second part of the question. I think that the Federal Government and the Justice Department should review the laws that protect juveniles from hate crimes. I've seen where people that have been involved in drug trafficking has gotten around those laws by using kids.

Are we now going to have a society where if you want to hang up a noose or paint a swastika, you use somebody underage to do it and therefore we can permeate society with hate by just playing around this juvenile law? Does the Federal Government have the same requirement that you have to be grown to commit a hate crime? If it does, we need visit or revisit whether that law protects us. If it does not, then does the State of Louisiana law supercede Federal law? I think they can immediately do this.

These nooses were hung over a year ago, sir. So I know that the wheels of justice may turn slow, but it seems that it is at a standstill because to deal with those nooses does not require interfering in any of the prosecutions of the local district attorney, does not take away any of the power of the prosecutor. It is to say that it happened over a year ago, is State law constitutional and is Federal law outdated where you now have to be grown to commit a

hate crime in America, I think that that is a threat to all of us that are in groups that have been targets of hate.

Mr. GOODLATTE. Thank you. Mr. Chairman, I believe my time has expired Unfortunately. I'd like to continue this on down the line.

Mr. CONYERS. Could we—let me allow you enough time to get to the two other witnesses.

Mr. GOODLATTE. If they'd care—

Mr. CONYERS. If you have a response.

Mr. GOODLATTE. Either of those questions.

Mr. OGLETREE. To both questions. In the first case, it seems to me, along with Richard Cohen, battery seems to be the appropriate charge. These were dramatically overcharged on the Jena 6. On the other hand, the second question, Robert Bailey, Jr., was assaulted with a bottle, had a gun put on him and those individuals received little or no punishment at all. So race has been a factor in the way punishment has been meted out. That is why there is no justice. There is no justice when anybody can look at these individuals and see that the amount of the punishment they are exposed to is a direct correlation to the race of the person who is the victim and the race of the person who is accused of the defense. And that is the problem at Jena that we keep ignoring.

Reverend MORAN. I think that the punishment that was given to the White children who hung the nooses, it was dealt out by the school system by suspension and whatever other means of punishment that was given to them. I think that the Black students should be treated the same. There should have been some type of educational status—educational punishment given to them. I don't believe that the law should have been part of what took place inside of the school when it was, in fact, a schoolyard fight. Also—we must also look at the fact that the third circuit court of appeals has already ruled out that Mychal Bell was illegally charged, but nothing has been done about that as of this point. Things are steadily rolling and the D.A. is steadily putting out punishment for even Mychal Bell. That is very unjust.

Mr. CONYERS. Thank you, Mr. Goodlatte, for your question. And that is why I wanted the entire panel to respond to it. The Chair recognizes the Chairman of the Crime Committee, Bobby Scott of Virginia.

Mr. SCOTT. Thank you, Mr. Chairman. I thank all the witnesses for their testimony. I guess I had a fairly specific question. That is, if you can show that the charging decisions were done in a racially discriminatory way, would sections 1983 and 1985 be available as a remedy? I'll ask Mr. Ogletree and the Department of Justice.

Mr. OGLETREE. In my view, the answer is yes. It would take a lot of effort to get that done, but that is a part of the basis of all of this testimony, that there are Federal statutes that have not been used and can be used to look at specific civil rights violations that could have been and should have been considered and still can be considered in what occurred.

Mr. SCOTT. And how would 1983 and 1985 be used?

Mr. OGLETREE. Well, there is a separate civil rights issue here in terms of how these individuals lost their basic rights as citizens.

I think if you look at the statute and look at the conduct here, it would require the Department to take a look at what occurred and do a thorough investigation or something. I am not sure they've done an 83 or 85. And then see what sort of remedies would be available for those who have been inappropriately punished and for those who have not been punished.

Mr. SCOTT. We know that—this is a hypothetical question. I know the case is being tried in court. If it could be shown that the charging decisions were made in a racially discriminatory way, I'd ask the Justice Department to comment on sections 1983 and 1985.

Ms. KRIGSTEN. I hesitate to speculate at this point whether someone could be charged either civilly or an entity can be charged criminally under the Federal Code in this specific incident. What I can say—

Mr. SCOTT. If it could be shown. That has to be shown in court whether or not it is true.

Ms. KRIGSTEN. Yes. One of the concerns in my providing an answer directly on this issue is that any decision about whether the statutes can be used would depend on the individuals who are found to have participated in these decisions. And there is an entire juvenile and adult criminal justice system that people have indicated may be troubling in Jena and because I don't want to be in a position where I'm specifying precisely who may be responsible—

Mr. SCOTT. I'm not asking for that. I'm asking whether or not you can show that a prosecutor has charged people in a racial discriminatory way, whether or not 1983 and 1985 would be available as remedies.

Ms. KRIGSTEN. I think there are civil remedies available for situations.

Mr. SCOTT. And what would have to be shown?

Mr. WASHINGTON. First of all, I'm no expert here, but I'll tell you what we've discussed so far. Yes, the answer to your question is yes. If we can prove that charging decisions are made in a racially discriminatory manner, then that leads to the strong possibility that we could move forward either under the statutes you cite or some other statutes in the United States Code. You've asked the second question, what would we have to—what evidence, I presume, that is your question, what evidence do we have to come up with? The law seems to indicate to us that we'd have to prove that the actor, whoever that would be, and I'm assuming you're talking about a district attorney, set about to charge one group of persons in a different way than another group of persons.

So for example, if the district attorney said I'm going to charge African Americans more rigorously than White Americans, then, yes, that would be a violation of law.

Mr. SCOTT. And what would be the sanction?

Mr. WASHINGTON. Again, I'm not the expert here for that. In some cases, there could be potentially a criminal sanction. In other cases it would be probably some order to supervise or remove the district attorney. I'm just not sure about how we'd go about doing that.

Mr. SCOTT. My colleague from New York asked about the education system. If you can show that people were denied equal op-

portunity at education because of the hostile environment, what sanctions would be available to the Department of Justice?

Ms. KRIGSTEN. At this time, the review of the educational system in LaSalle Parish is being conducted under the view of the Federal desegregation order. So there will be specific relief available depending on what the outcome of that investigation shows. The attorneys who are working on this case will have the range of options for going into court for specific relief on a particular issue all the way through perhaps the contempt of court motion.

Mr. OGLETREE. Mr. Scott, if I could have just one quick response to that as well. Mr. Scott, representing Mychal Bell, reminded me that, in fact, that the third circuit court of appeal concluded that this prosecutor violated the law in charging the Mychal Bell as an adult in the first instance, number one. But even more importantly, it would be interesting to see whether this prosecutor in the record has ever, ever prosecuted any White person with an attempted murder case for what was, in effect, a fight on a schoolyard premise.

So the foundation is there to look at this. The *United States versus Armstrong*, a case from the Supreme Court a decade ago, talked about the 1983 actions and what is the threshold here. It seems to me this record needs, as I said earlier, at least a foundation to make that claim.

Mr. SCOTT. And what would be the remedies under 1983 or 1985?

Mr. OGLETREE. Well, I think the remedy is beyond 1983 and 83 in terms of violation of civil rights. One of the things that we haven't even discussed today is that in virtually every State in this country, any person, not just lawyers and judges, can file a complaint that could lead to disbarment and other penalties. Michael Nifong in North Carolina, as you know, was disbarred and punished for his involvement in the Duke lacrosse case. And that happened before anybody was taken to trial or convicted.

So the idea of waiting until after it is over is one strategy, but the reality is that there are things that can and should be done for judicial misconduct. The third court of appeals is all rude about the judge's error, et cetera. So this is a record that is replete with judgments already made showing disparities based on race. People should not have been charged, which is only one side of it. But also we do know the other side, that people have been charged and not charged for similar conduct and race is a factor. So there is a cumulation of material here that would at least say that the civil and certainly at least consideration of some criminal prospects are appropriate as well.

Mr. CONYERS. Thank you very much. The Chair recognizes Dan Lungren, a Member of Congress, then a State attorney general for California, and then a Member of Congress back on Judiciary Committee again.

Mr. LUNGREN. Thank you very much, Mr. Chairman. I missed you so much I had to come back. I appreciate it. This is a very difficult issue any time you have race interjected in the criminal justice system. I can recall amidst one of the biggest racially charged issues we had in California, the Rodney King case, I had two cases turned over to me, and we had to make a charging decision on

whether Rodney King got to be charged with further crimes in unrelated circumstances and we made the judgment there was not sufficient evidence.

And I remember getting a lot of mail on that. Another high profile case in our State was the O.J. Simpson, we were asked to take over the question of whether at that point in time a decorated detective of the Los Angeles police department had committed perjury on the stand. And we did and we got a conviction on that. I probably got more hate mail on that than anything else. And in both cases, the mail was really racially tinged. But we made our decision irrespective of the race of the individuals involved and tried to look at the evidence. I'm troubled by the atmosphere that existed in this high school because it evidently led to a terrible situation with respect to racial relations and there were a number of victims here and one of the victims is Justin Barker, as I can see it.

Unless I'm wrong, he didn't have anything to do with the nooses. Unless I'm wrong, the evidence suggests that he walked out of the gymnasium door and was as someone said blind sided and knocked unconscious to a blow to his head and it was then that he was on the ground and that he was kicked and some people say he was kicked with people who had tennis shoes and therefore shouldn't lead to the level of charges. But it sounds to me more than a simple assault or at least you could potentially charge someone with more than simple assault in that particular circumstance. Whether or not attempted murder is appropriate under the laws of that jurisdiction, I don't know, because I never prosecuted under that jurisdiction.

But I think it has been too easily stated here that this was just a simple assault. At least I would look at it as a prosecutor to see whether it was more than that. But my point is here you have, as far as I can tell, a student who never was involved in the incident of alleged hate crime, unless I'm mistaken, who is set upon by others and one of the defenses is they were upset because of the atmosphere that has been created and that just goes to show you when you don't have order in a situation, when you don't have respect from a racial standpoint, you have a lot of unintended victims that end up there. And we need to talk about justice being done to all of them, it seems to me.

The problem of the Justice Department is an interesting one, because I had a similar situation. As Attorney General in California, I could intervene on any District Attorney in the State who did not bring forward criminal charges, but I couldn't act to stop him from bringing charges. And the argument was that if the D.A. Wasn't doing his job in bringing charges where they ought to be brought, there was no alternative except the Attorney General to come in and do it, number one. But if someone overcharged or didn't do an appropriate job of prosecuting, you had the jury that could look at it or the trial judge to look at it or the appellate that could look at it on a State level and then Federal level. So there's sort of a system whereby we try and regulate ourselves here, and I'm not sure there's a simple answer to this question.

I would like to ask Professor Ogletree, someone I consider a friend. This is kinda fun. I get to ask you questions, instead of you asking me questions.

Mr. OGLETREE. This is true.

Mr. LUNGREN. Because you have gone from the specific to the general and you've talked about, across the Nation, Black students, Black males being charged more harshly or being dealt with more harshly than White counterparts. I'm going to ask you a question that's kind of a difficult question to ask, because it invites a lot of interpretation, but when we were looking at this issue across the board of juvenile crime in California, one of the things that we looked at was the breakdown of the family structure, irrespective of race, the breakdown of the family structure and that young people who—

First of all, let's put on the table there's a lot of great single parents out there, doing a great job and a lot of kids are doing well in a single-parent household, but if you just look at the figures you will see that children from single-parent families have a larger percentage of drug use, alcoholism, interaction with the criminal justice system.

Have you ever looked at that issue as—take race out of it and looking at how young people in schools come up against the—either the enforcement system within the schools or the criminal justice system, depending upon whether or not we have a family structure behind them that is a complete family structure?

Mr. OGLETREE. It is a very good question, Congressman Lungren. Let me just tell you what is missing from it, and we have looked at this. It is interesting that in many two-parent families, where both parents were educated and working, there is the same sort of drug use, same sort of violation of laws, but many are in private schools or other institutions where the laws aren't applied equally. So it's not the structure of the family. It's the structure of a system that considers something a prank or practical joke. In another context, when that student doesn't have a parent to come and support them, it is considered a felony or attempted murder.

So I think it is too easy to gloss over saying family structure is the cause and consequence of the problem. It is bigger than that. And you look at the disparity in the punishment, it is a large factor of where—

Let me give you an example of assault with a dangerous weapon in a school. That sounds like somebody pulled a gun or a knife on somebody and assaulted someone else. It could be as simple as a kid taking a straw, putting a piece of paper in it and spitting it at someone else and almost hitting that person. That is considered an assault with a dangerous weapon.

In fact, a lot of the cases we have looked at at the Charles Hamilton Houston Institute for Race and Justice of the kids being expelled and suspended, it does not involve guns, it does not knives, they are the exception rather than the rule. I think the fact of the matter is that so much behavior that should be addressed within the context of the rules of the public school system are now being addressed in the criminal justice system. There are police on the campuses of the high schools and junior high schools. There's a direct process for people getting prosecuted.

And so you raise a good question, and we can look at that more about how much family structure matters, but I can tell you the disparities in the individual cases are based more on the race and



class of the person involved than they are on the nature of the offense that's been committed.

Mr. LUNGREN. Thanks very much.

Reverend SHARPTON. May I address the Congressman on that one, Mr. Chairman, just quickly?

Mr. CONYERS. Yes.

Reverend SHARPTON. The National Action Network, the group I have, Congressman, whose Acting National Director sits behind me, attorney Charlie King, we have done studies on that, and we will make available to you the results, but we are finding that there may be a difference in juveniles coming from broken homes as opposed to full homes in the criminal justice system. But when you further break it down with White home and non-White homes, you find the same disparity that you find when you deal with children that are with their parents and children that are not, and we don't have final results.

So the question should also be in your looking into this is whether race is also carried over when you get to the broken-home status, when you look at the family mix-up, because I am beginning to see the trend doesn't change, and I think that's important.

I might also say for the record none of us don't see Justin Barker as a victim. The question is whether or not there's equal prosecution. No one justified what happened to Justin Barker.

Martin Luther King, III, has just joined us.

We said going in Justin Barker should not have beaten. It had nothing to do with whether he was connected to the nooses or not. It is about how you have one prosecutor that seems to overprosecute in some cases and not in others. We are not trying to make a link in that. The link is the same prosecutor seeing different situations much differently.

Congressman CONYERS. Thank you very much.

The Chair recognizes, Sheila Jackson Lee, the gentlelady from Texas.

Ms. JACKSON LEE. Mr. Chairman, let me thank you very much again, for this hearing.

I respect Reverend Sharpton, and I know that in the second sentence of his remarks he was respecting this Committee since he made the inquiry early on and he recognizes that there are three branches of government and because of this Chairman we now have vigorous oversight.

Let me acknowledge Martin Luther King, III. Having worked for the Southern Christian Leadership Conference, I have a special affinity for your family and Dick Gregory, who is here as well.

Judge Leon Higginbotham said that said race matters. And I respect my good friend, who I will share a hearing this afternoon. He is the Ranking Member to the Committee that I chair, Mr. Lungren. All of us are looking at societal issues. We know Dr. Poussaint and Bill Cosby have just come out with a provocative book.

I don't know if I can get through the questioning because, as a parent, I'm on the verge of tears. Mychal Bell is now in jail. Marcus Dixon is now in jail.

My good friend, Congressman Scott, has laid the legal precedent; and I am not going to review that. I will say that I am writing leg-

isolation that deals with racial theme parties on college campuses. I revised it to include high schools, primary and secondary schools, dealing with the question of hanging nooses, which to date had failed to make the mark at burning crosses. But we recognize that nooses have now proliferated across America. They are in the workplace.

And these questions will be for U.S. Attorney Washington, the U.S. Attorney from the Western District, and Ms. Krigsten, Reverend Sharpton, and he might yield to the attorneys and Professor Ogletree.

Reverend Moran, let me thank you for declaring two systems of government, two systems of justice. Let me thank you for your prayerfulness, and let me thank Dr. Ogletree for using the word "cancer". Let me thank the NAACP for burying the N word, "nigger", but Reverend Moran said that the children were called niggers.

So let me begin my questioning by just a procedural question. Ms. Krigsten, when did the community relations team come in for the first time?

Ms. KRIGSTEN. The community relations team has been working with—

Ms. JACKSON LEE. When did it come in for the first time, please? What is the date that it came in?

Ms. KRIGSTEN. I'm going to defer to the legal counsel of the Community Relations Service.

Ms. JACKSON LEE. Thank you.

Quickly, can you give an answer, please? My time is short. What is the date that it came in?

Mr. HENDERSON. The first date it was activated was on June 12th of this year.

Ms. JACKSON LEE. Is that 2007?

Mr. HENDERSON. Actual on the ground, but we were—

Ms. JACKSON LEE. 2007, June, thank you very much.

Ms. Krigsten, can you provide me with a detailed response to the calls that I made repeatedly to the Civil Rights Division speaking to the Assistant Attorney General for Civil Rights and to the FBI? Would you provide a chronicling in writing of your responses that you gave to my office and whether or not the FBI is on the ground looking into the treatment of Mychal Bell at this time. I don't need it in public statement. Just give it to me in writing.\*

Let me go forward to U.S. Attorney Washington.

September 2006, three nooses were found hanging. The principal said, let's expel them. The students were suspended. Then, in the fall, we had a series of fights between Black and White students. In late November, arsonists set fire to the school building. A White student beats up a Black student who shows up at an all-White party. My understanding is that a shotgun was pulled by a White man on three Black students at a convenience store.

Let me ask the Chairman to put into the record, U.S. Attorney: Nooses, beating at Jena High, not related; noose incidents evoke segregation.

---

\*The information referred to was not received prior to the printing of this hearing.

Right now, I am going to ask you and I would like the people that I call to answer this question.

Mr. CONYERS. Without objection, it will be entered into the record.

Ms. JACKSON LEE. I thank you.

[The information referred to is available in the Appendix.]

Ms. JACKSON LEE. You stated on the record that nooses equal hate crimes. I'm asking you now, first of all, to go back to Jena, Louisiana, in the symbolic position that you hold, one because you merited appointment, but you are the first Black Western District U.S. Attorney. And I'm asking you to go back and I'm asking you to find a way to release Mychal Bell and the Jena 6.

My question, that goes down the road, I want to know why in the course of meetings of local district attorneys, why you didn't engage with Mr. Reed Walters, who may be subject to prosecutorial abuse, and confer with him and say, Mr. Walters, this is not the way to handle this case. I can see disparate treatment by White students being suspended back in school and by Mr. Bell being still in jail on an offense that he served 10 months for, 10 months; and, therefore, the juvenile judge could have said, time served, and he could have been released.

I want you to tell me why you didn't engage with the D.A., and I want to know what you are going to do now.

Reverend, I would like you to tell me how they treated us when they came there; and, Dr. Ogletree, please tell me what Federal action, legally and legislatively, we can have.

Mr. Washington, tell me why you did not intervene, not by way of the legal system but the consultation that the U.S. Attorneys have with the local district attorneys. Why didn't you intervene? Broken lives could have been prevented if you had taken the symbolic responsibility that you have being the first African American appointed to the Western District. I don't know what else to say. I am outraged, and that's why my voice is going up like this, literally outraged.

Mr. CONYERS. The Committee will stay in order, and the gentlelady's time has expired. But we do seek a response from the persons that she indicated.

Ms. JACKSON LEE. I thank you, Mr. Chairman; and I thank you for indulging the increased spirit of my questioning. And I thank Mr. Washington for respecting the emotion that I am showing here today because of the pain I feel. Thank you very much.

Mr. WASHINGTON. Thank you, Congresswoman.

I don't know where to start. You asked a lot, so I will start from the beginning, I suppose.

First of all, I did intervene. I did engage the District Attorney. We had conversations about his charging decisions and things of that sort. At the end of the day, there are only certain things that a United States Attorney can do, that a Federal representative can do with respect to a State and how it handles its criminal justice system.

What I will tell you however is that, just like you were offended when you first heard about this matter, I was also offended. I, too, am an American, an African American. I was very offended about what I heard.

I took steps to see what we could do within the ambit of the kind of powers and responsibilities that I have. I am a child of the '60's, of the desegregation era. My mother marched—I'm sure like your parents did—in the 1960's when Martin Luther King was urging African Americans to get out and march for our rights.

Ms. JACKSON LEE. That gives us an extra burden.

Mr. CONYERS. Just a moment. I'm going to ask that the witnesses be able to finish their statements without any further interruption.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. WASHINGTON. Thank you, sir.

So I am, I think, what Dr. King was trying to get us to do, trying to get us to be, trying to get us to become many, many years ago.

Now, having said that, we still have a system of justice that we have to comply with. We still have rules and responsibilities. We still have a concept called due process. We have a Federal scheme of laws that I am, unfortunately, constrained to.

At the end of the day, I hope I've answered your question. I did have that discussion that I think you were most concerned about.

Mr. CONYERS. Are there any other responses? Reverend Sharpton?

Reverend SHARPTON. Yes. I think that Mr. Washington's statement, Congresswoman, is most disturbing to us; and that is when he said that the Federal Government through he as U.S. Attorney got involved and there was nothing they could do. That is why I said in my opening statement, did the Federal Government or the United States or the Union win the Civil War or not? Because are we saying that the Federal Government cannot protect us against State laws that are set up unfair and unequal?

It is unconstitutional to say you have to be grown to commit a hate crime. And what they are saying, beyond Mychal Bell's case, beyond Jena 6, that if you are under a certain age, we will allow you to operate hate with full immunity; and that is something I don't think the Federal Government can tolerate, when we are seeing nooses hung all over this country. That is first.

Secondly, when they can stand by and watch this young man do 10 months in jail, and then the Third Circuit overturns that, and the same judge that was the adult judge becomes the juvenile judge and turns around and gives them 18 months in revenge because the same judge and the same prosecutor runs the same—the whole town. And we say we have to wait and see, while they are doing interviews over at CNN and others, creating the climate that this is fair and this is just. I think that this is nothing tantamount to aiding and abetting people that Dr. King fought against.

And we don't have to experiment. Dr. King's son is marching now. We are not talking about our mamas. We are marching now. We marched in Jena now. We don't have to go back to back in the day. We're still in the day. And we need some people today to do what Eisenhower did, Johnson did and Kennedy did. That's intervene. Not just sit down and have some casual conversations with the D.A. And say, explain to me were you are so biased.

Ms. JACKSON LEE. Dr. Ogletree.

Mr. CONYERS. Just a moment. I've asked—Ms. Lee, your time has long expired, but I have to keep the control of the hearing.

Ms. JACKSON LEE. I agree, but Dr. Ogletree was one of the ones that I asked to answer.

Mr. CONYERS. I'm going to recognize Dr. Ogletree.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. OGLETREE. Thank you, and I will respond very briefly.

There are laws, both State and Federal, that could have been used and should have been used and can be used in the prosecution, particularly the young individuals involved with the nooses who were not charged.

There is a Louisiana statute, revised statute 14, section 107.2, which talks about institutions receiving Federal funds, protecting individuals against racial violence and threats that could have been used.

There is also a Federal statute, title XVIII, that Richard Cohen mentioned in his report, title XVIII, section 5032, that also could be used to make this a 10-year felony; and even though they are juveniles that would not prevent them from being charged.

So there are laws on the books that could have been used. I don't think that they are prevented from being considered now. That's why the Federal law exists, and I think there's a way to examine that, and I'm glad you raised that question.

Mr. CONYERS. The Chair wishes to announce that he recognizes the presence of Dick Gregory in the hearing room and am very pleased that he could attend.

And the Chair also recognizes the presence of Martin Luther King, III, who has graciously considered to submit testimony in connection with this hearing.

Welcome, Reverend King, to this hearing.

The Chair now turns to Steve King, the Ranking Member of the Subcommittee on Immigration, from Utah for his comments or questions.

Mr. KING. Iowa in this case, Mr. Chairman.

I thank the Chairman for recognizing me, and I also welcome the living examples of civil rights that are in this room. It's something that I have watched and followed throughout my development years, and it takes us into this current era.

I've often worked and spoken and prayed for the time that we can put these racial divisions behind us, and I actually believe that we will know when we arrive there when we can get to the point where we can make light of this, rather than serious of this. And, of course, this is no time in this meeting room today. We've got much more of this to get behind us before we can get to the point where we deal with each other with the kind of relationship that Chairman Conyers and I do, man to man, person to person, human to human, people that are created in God's image. We should be treating each other with that same level of respect and dignity.

I have to, though, ask you to look at this from a bit different perspective. Because it is our job to look at this without regard to race, if we can, and then with regard to who did what and when and what crimes are available for prosecution.

Of all the testimony that's flowed out here today, the one that I would take us back to is Mr. Washington's in response to the question, was this a hate crime, the hanging of the nooses? And your response, Mr. Washington, as I have it, is, yes, hanging a

noose under these circumstances is a hate crime. Could you clarify whether you're referring to Federal law or State law?

Mr. WASHINGTON. I'm referring to Federal law and not State law.

Mr. KING. I thank you, Mr. Washington.

And then I just turn to Reverend Moran. Would you agree with that statement, that the hanging of the nooses was a hate crime?

Reverend MORAN. Yes, I would.

Mr. KING. And is there anyone on the panel who would disagree with that statement?

And, if not, then let the record show that there was no disagreement and that the panel is unanimous in concurring with the opinion of Mr. Washington that hanging of the nooses was a hate crime.

Maybe I need to make a statement first. The tone that I pick up here from listening to this testimony is that the hanging of the nooses seems to be more egregious than the beating that took place. I think that's got to be put back in a perspective. The nooses were hung, by my records, on September 1st; and the beating took place on December 4th. That's 3 months for cool off, but we know also that there were other incidents in between that accelerated this.

And I know, Reverend Moran, you testified that the punishment that was meted out to the White students who hung the nooses was done by the school and also that that would have been an appropriate response for the school to discipline those who perpetuated the beating. Would it be your position that that's where the issue should have stopped?

Reverend MORAN. I would think so, yes.

Mr. KING. But then I would ask, Mr. Washington, if the hanging of the nooses are a hate crime, as all the panel agrees, was the beating itself a hate crime?

Mr. WASHINGTON. We've had discussions about that; and, in fact, I've had discussions with members of this panel about that and members in the audience; and there's some disagreement. I have stated in the public I think fairly vigorously that there were no statements made in the police reports that are actually taken that would get me to the element that the beating of December 4th was undertaken because of race. That's not to say we won't go back and relook at this, but, from our perspective, no, we did not get to the conclusion that the December 4th incident was a hate crime.

Mr. KING. Mr. Washington, I raise that question because it strikes me that an act of violence, in my view, is more egregious than a more passive act of the hanging of the noise. And I know I come from a part of the country that doesn't have that same sense of sensitivity.

But I turn to Reverend Sharpton. The jury that sat in judgment of Mychal Bell was an all-White jury. Is that an issue, from your perspective?

Reverend SHARPTON. Yes, I think that the selection of the jury is certainly an issue, but I also think that you've tapped the core of my testimony, Congressman King. You have gotten the U.S. Attorney to agree this is a hate crime and you've talked about the crime of the young man being assaulted. But, let's be clear, it was never prosecuted as a crime. A school does not prosecute crimes.

A school deals with discipline. The only crimes that were prosecuted was for the beating. So even if you or I would say it was more egregious, we're not talking about two crimes treated the same. We're talking about one crime being excused. The criminal justice system, Federal or State, never prosecuted for the hanging of the nooses. A school cannot take the U.S. Attorney's job.

Mr. KING. For the record here, and I'd close this because my time has expired, I want to make sure that those that are viewing and witnessing this hearing understand that the jury that sat in judgment of Mychal Bell, although it was an all-White jury, was selected from a pool that was an all-White pool in a community that's about 90 percent White, about 10 percent Black, and that the Black jurors who were called to be part of that pool that day did not show up.

Reverend SHARPTON. There were conflicts on how they were called. Some said they were not noticed, and some said that they were relatives of Mychal Bell. His attorney is here, if you want to get—

Mr. KING. But the selection process, though, did not have the opportunity to choose a single Black on the jury. I think it is important to clarify that on the record, and I thank the witnesses all for their responses and their testimony.

I yield back, Chairman.

Mr. CONYERS. Thank you very much, Mr. King.

The Chair now recognizes one of the two Members of the Judiciary Committee that traveled to Jena, Maxine Waters of California.

Ms. WATERS. Thank you very much, Mr. Chairman. I have to thank you again for calling this hearing so quickly.

And while I know that you are a very thoughtful, careful and deliberate Chair, taking all things into consideration, I am disappointed that District Attorney Reed Walters is not before us today. That's who I wanted.

Also—

Mr. CONYERS. As you know, he was invited.

Ms. WATERS. I'm sorry, you did indicate that; and I don't know, Mr. Chairman, whether or not there will be more hearings, and perhaps you will determine that some time later, but of course we do know you do have the power of the subpoena, so perhaps that's something we could look toward for the future.

Let me just, if I may, go back to Mr. Washington. Mr. Washington, I first met you when you appeared on television speaking about the Jena 6. If I recall what you said at that time was that it had been determined that no hate crime had been committed, is that true? Is that what you said on television?

Mr. WASHINGTON. At which stage? The December the 4th incident or some other stage of the time line?

Ms. WATERS. Do you remember when you were on television? What were you referring to?

Mr. WASHINGTON. It depends on what the question was. If you're talking about the December 4th incident, I have been I think very—fairly clear that I did not believe that that was a hate crime because of the statements that I had read and the information in those statements.

With respect to August 31, the hanging of the nooses, the September 1st incident, I think we've been fairly clear that that had all the elements of a hate crime.

What we're missing there, of course, if we were to proceed forward, would be evidence and an adult to move forward with. It's not that at the end of the day that is not—whether or not it is a hate crime, the noose hangings—

Ms. WATERS. Well, that's really what I'm referring to; and that's what I thought you were speaking to on television where you had determined that it was not a hate crime.

Mr. WASHINGTON. No, ma'am.

Ms. WATERS. That's not what you said on TV?

Mr. WASHINGTON. No, ma'am.

Ms. WATERS. All right, that's good. That's fine.

To Ms. Lisa Krigsten, counsel to the Assistant Attorney General, in your investigation, have you taken into consideration what has been alluded to several times here? Reed Walters attempted to try Mychal Bell as an adult. There was no law in the State of Louisiana that would have allowed him to try him as an adult, as I understand it. Was he attempting to try him as an adult for attempted murder or for aggravated battery? Which was it?

Ms. KRIGSTEN. I can't speak for what Mr. Walters was attempting to do.

Ms. WATERS. Well, yes, you can. That's on the record. He attempted to try him as adult. What was the charge at the time?

Ms. KRIGSTEN. I believe the charge was attempted murder.

Ms. WATERS. Does the State of Louisiana allow for the trying of juveniles for attempted murder?

Ms. KRIGSTEN. It is my understanding—and, again, I am not a lawyer who—

Ms. WATERS. You should know by now. What is it?

Ms. KRIGSTEN. I'm not a lawyer who has ever practiced. It is my understanding, based on Louisiana law, that a juvenile can be transferred into the adult criminal justice system with a charge such as attempted murder.

Ms. WATERS. So you do not see that the charge of Mychal Bell as an adult was something, as it has been described here, as something that was being done for the first time, that it was unusual and that this should be considered in the investigation of how the District Attorney has used or abused his power?

Ms. KRIGSTEN. Obviously, we are considering everything we know about this. I am not aware of the allegation that this was the first time that it had been done. Obviously, we're still gathering information; and we are going to take everything we learn about this incident into consideration of how we proceed.

Ms. WATERS. Thank you.

Have you started to look at the reported threats to all of the Jena 6 and some reference to them and their addresses on the Internet and a charge to pull them out of their houses?

Ms. KRIGSTEN. We have heard about these threats. The FBI takes these threats very seriously. There's an open investigation into many incidents surrounding Jena, including some of the threats that we have learned about. The FBI is aggressively inves-



tigating all of those allegations. The U.S. Attorney's Office is working with the Civil Rights Division.

And, again, I cannot emphasize enough how seriously we take these incidents; and if we find that there's a prosecutable violation of Federal law, we certainly will seek to do the appropriate action.

Ms. WATERS. Mr. Ogletree, could you illuminate the discussion on the trying of Mychal Bell as an adult and the history of that as you know it and understand it?

Mr. OGLETREE. Yes. With the permission of the Chair of the Committee, I would like to have entered into the record the decision of the State of Louisiana Court of Appeal, Third Circuit, on September 14th, 2007, where it concluded——

Mr. CONYERS. Without objection, so ordered.

Mr. OGLETREE [continuing]. That Mychal Bell should not have been charged with aggravated battery as an adult and reversed that conviction.

[The information referred to is available in the Appendix.]

Mr. OGLETREE. So that the record is clear, the Louisiana Court of Appeals from the Third Circuit made that determination; and it was clear that he was overcharged, that the lawyer who represented him didn't try to prevent that from happening as his original charge, that the court didn't grant a dismissal of charges as the lawyers requested, and only when it went to the appeals court was it finally rectified. So the error occurred from the time Mychal Bell was charged and wasn't corrected until, gosh, a year after the charges and that the record on that is absolutely clear; and I would hope that we submit the rest of the materials as well.

Ms. WATERS. Thank you very much.

Mr. Chairman, as I close, let me say for those of you that are here today, you must recognize that the problem that we are dealing with is not simply in Jena. If you take a look at what has happened on this Committee today, first of all, the opposite side of the aisle is missing for the most part; and those who came in, Mr. Lungren and Mr. King, were concerned about Justin Barker. They came in asking questions about Justin Barker and even saying that perhaps we should take the hanging of the nooses lightly and someday we will be able to maybe kind of look back at this and not take it so serious.

So I want you to understand that because just as, we're talking about what is wrong in this country, the institutionalized racism that leads us to this point, it is not only institutionalized racism that causes the disparate treatment such as in this case, but it is the kind of thinking that goes on in this country by public policymakers. We see things differently.

We're here talking about a case of six young Black men, who obviously have been treated differently. We're talking about a District Attorney, a prosecuting attorney who appears to have abused his power. We're talking about nooses that have been hung over trees. And we have those who come in today who are talking about single-parent families and the fact that perhaps more criminality comes out of single-parent families and talking about perhaps Justin Barker's civil rights were violated. That's how they see it. We see it differently.

Thank you, Mr. Chairman.

Mr. CONYERS. Well, I thank the gentlelady.

And the Chair would observe that if everybody agreed with us, we wouldn't be here today. That's what the problem is, is that we're addressing we do have this grave disparity that has been developed as a result of this incident in which tens of thousands of people have alerted the Nation to the significance of Jena, Louisiana. And it is not to blame or pinpoint Jena, because there are Jenas all over this country.

And it is to this end that this hearing to me becomes extremely significant in terms of how we deal with this here today. But what is it that we do about the tremendous legal analysis at the State and Federal level as to where we go from here and how we beef up the Department of Justice, which has gone through a recent trauma all of its own? I mean, we've got a part of the Federal Government that is in a very disabled circumstance. And so I appreciate the fact that there would be logically different and opposing views put forward, but it is what we do with this information that will be the test of time that we will all be judged by.

The Chair's pleased now to recognize Steve Cohen, the gentleman from Tennessee.

Mr. COHEN. Thank you, Mr. Chairman.

And I just want to emphasize Congresswoman Waters said something about "this side of the aisle." I don't know if she's referring to Congressman King, but I'm only on this side of the aisle because we have a majority.

I want to ask the attorneys, Mr. Washington first, about the hate crimes. My staff and I have been looking at this for a couple of weeks. Pastor Derrick Hughes of Springdale Baptist in Memphis called me and asked, can we make this a crime, to hang a noose? I know that there are laws about swastikas, but don't they have to some specific intent not just the display of an object but the object with a particular intent?

Mr. WASHINGTON. Yes, that is among the things that have to occur.

Mr. COHEN. And in this situation is it because it was on school property that makes it a hate crime?

Mr. WASHINGTON. What makes it a hate crime is the idea that there was a threatened use of force, that it was to intimidate and to interfere with some folks because of their race while they were exercising a constitutional right and that is going to school.

Now, what was sort of confusing here and there is agreement amongst the panel, except for the fact that we don't agree as to whether these particular folks could have been prosecuted. These particular folks not would not have been prosecuted, but they could not have been prosecuted. It was impossible under Federal law as written today for us to go after these particular juveniles.

Mr. COHEN. Why?

Mr. WASHINGTON. Because they are under the age of 18.

Mr. COHEN. Because of their age. Did these individuals make a threat of violence?

Mr. WASHINGTON. Well, that is among the kind of things that we would have to prove in court. And we have to go in and make our best case, of course, and if the—

Mr. COHEN. So the simple display of a noose is not a hate crime?

Mr. WASHINGTON. That's correct.

Mr. COHEN. Right. And so it has to be with some intent and something else to it.

Mr. WASHINGTON. There are elements in the statute that we have to prove in court.

Mr. COHEN. What if it was not on a school ground or in a Federal building? What if it was simply a noose at somebody's home? Would it be sufficient of their constitutional right of pursuit of happiness or whatever? I don't know. That's not a constitutional right. But would there be places that are not covered because of the locale of the placing of the noose.

Mr. WASHINGTON. That's possible, but there are other statutes, possibly, that we'd look at if there was racial animus involved.

Mr. COHEN. Well, you say there would be the ones you might look at. Is there maybe a void somewhere that needs to be filled where exhibiting of a noose, the burning of a cross, the painting of a swastika with the intent to deprive a person of their constitutional rights needs to be passed either with that language, which I just mentioned, or some other language to fill any void.

Mr. WASHINGTON. Actually, I think you just quoted the elements of a Federal statute today. 18 USC 241 or 242 already exists to cover the situation that you just indicated.

Mr. COHEN. So you think it is pretty filled?

Mr. WASHINGTON. Well, it is pretty filled. Where we get into significant discussions is where it is the limit between speech versus criminal law.

Mr. COHEN. So you have to have some element of violence alleged to have occurred to make this a hate crime; is that right?

Mr. WASHINGTON. We would like to see that.

Mr. COHEN. You say you like to see it. It has always been my thought, maybe it is just conventional wisdom, that the hate crime is violence and not speech; and a noose, while it is as objectionable as a swastika or burning a cross, is speech. What do you have to have added to that speech? Don't you have to have something besides speech to make it a hate crime?

Mr. WASHINGTON. Yes. Just as an example, 18 USC 245, when you get to the punishment section, if there is no injury, it is a misdemeanor. So that is one. When you back up into the elements of the crime itself, you do need some use of force or threatened use of force.

Mr. COHEN. Great.

Let me ask a different subject. Maybe Mr. Ogletree would be best to respond. I'm not sure.

Do you know if there's anything that we should look into putting in the No Child Left Behind law, if there is anything there now, maybe to mandate education that requires courses on tolerance or some courses on civil rights history, Holocaust history or things like that to teach all children of the United States about such episodes of racial and ethnic intolerance?

Mr. OGLETREE. Congressman Cohen, as I said earlier in my remarks, I think No Child Left Behind is a huge opportunity for this Congress to address a number of these issues that are slipping and sliding away from both State and Federal prosecution. It is the right to an education, and we leave No Child Left Behind when we

have a real law that treats all children fairly in terms of the quality of their education. I would, with my institute, be more than happy to work with Congress and think of ways to specifically amend and reform the No Child Left Behind to address some of the underlying issues here that aren't being addressed in other ways.

I want to make a quick comment to your earlier query to Mr. Washington. I really can't think of a circumstance where a noose is a household item or an article. It's offensive, it has a deep history, and you can't trivialize it because it is in someone's house or they don't say words.

It is designed for one purpose. Nooses were used for one thing and one thing only. In the history of this country, it was used, by and large, to lynch Black women and men. And we can't ignore the 3,000 people who died and no one was prosecuted. We can't ignore that this Congress, this Senate just last year didn't stand up and talk about an anti-lynching law. They had a voice vote, because there still are questions about that.

I hope we don't bury the history with what this symbolizes. This is one of the most destructive, mean-spirited, racist examples of individual behavior; and it doesn't just hurt the three, five or seven Black children under the tree. It hurts all of us, every single one of us.

I don't have to be in Jena to be deeply offended whenever any person for any reason on a truck, in a car, in a tree, in a house has a noose. It is not a neutral term. It is a term that connotes threats, violence, death and destruction. And I think we should not try to homogenize or anesthetize what is one of the great symbols of racial hatred that's so pervasively marked this country's history, that influenced a world war and that is still a symbol that groups like the Ku Klux Klan applaud and celebrate.

It is another way to dig it in. It is not a neutral item or instrument. It is an instrument of hate and the most vile form of hate. And Congress in no uncertain terms should ever tolerate a noose as anything as a household article or garment that can be used as a term of endearment. It is a term of hate, and we should never move from that.

Mr. COHEN. I certainly agree, and that's why we have been looking to make any amendments in the law that might be necessary, any void concerning a noose; and I appreciate each of the members of the panel and particularly the Chairman for holding this hearing. If you could get us some suggestions on No Child Left Behind, I think we would like to put that in and offer it as an amendment. But Tennessee has a good course where we teach people about the Holocaust and teach about civil rights and that's required, but a lot of States don't have it.

Mr. OGLETREE. I would be happy to submit that.

Mr. COHEN. Thank you, Mr. Chairman. Thank you, panel members.

Mr. CONYERS. Judge Hank Johnson of Atlanta.

Mr. JOHNSON. Thank you, Mr. Chairman. I must say that I am very happy that you called this hearing so quickly in response to the escalating developments in Jena, Louisiana, which continue to this day an injustice that pains the hearts of so many, including

myself; and I would first want to kind of set the record straight about what actually happened here.

Back on August 31st of '06, a student who had asked for permission to sit under a tree, indicating a problem in Jena, Louisiana—anytime you have to ask for permission to sit under a tree, there's a problem. And so the student sat under that so-called "white tree" August 31 of '06, and that's when all Hades broke lose. The noose incident, nooses hung from trees, we know what that means. A noose is not a symbol of endearment. It's a symbol of terrorism, and terrorism was commenced.

The students who engaged in the terrorist act were suspended. And when the Blacks protested, when they exercised their constitutional right to protest the slap on the hand given for the terrorist incident, then the LaSalle Parish District Attorney, Reed Walters, flanked by police officers, came to the school and issued a threat to the students. He said, with the stroke of my pen, I can make your lives disappear, so you'd better be quiet. But the situation continued to escalate.

He's also, by the way, Reed Walters, the attorney for the LaSalle Parish School District, which means that he has access to all of the privileged information that these students have, all of their school records, all about their parents and all about their families. He has access to that.

And so the situation continued to escalate. The building, the school building, was burned back in November of '06. Thereafter, physical attacks against Black students ensued.

One of the Jena 6 students, Robert Bailey, was attacked physically; and then the next day a White boy pulled a gun on him and they charged Robert Bailey with stealing the gun after he took the gun away from the guy. Egregious conduct. Then taunts, calling folks niggers out in the schoolyard. And then, finally, there was this fight, a schoolyard brawl which resulted in, you know, a small degree of physical injury to the White student who attended a party later on that night.

And then the Black students, the Jena 6, were charged with attempted murder, and that's what was done to try to diffuse this situation, was to treat it harshly, treat it with the long arm of the law, to treat it under the color of State law in a terrorist way.

At some point, the Federal Government became aware of this situation, and I'll ask about that in a second, but I do know that at some point the parents, calling out for some kind of justice, none being forthcoming from the Federal Government or the State government, they contacted someone who they knew was about justice, and that was Reverend Al Sharpton. And Reverend Al Sharpton responded, and I want to thank you for your response.

There are people who will criticize you, Reverend, and say you only go where the cameras are, but I will say that wherever you go, the cameras go. And it sheds light on this gross injustice that was happening and it continues to happen.

Marty King, Jesse Jackson, all of the other stalwarts of the civil rights movement came out and responded to this with 20,000 or so young people who arrived at the scene. I know, Mr. Washington, that it upset the locals. You indicated that they were not expecting that kind of a response, and so they—they were undeterred, how-

ever, after the appellate court released or after the appellate court threw out the charges against Mychal Bell, the adult charges, and he was released on bond. But now he has been locked up again for probation violation, and it smacks of vindictive prosecution. I wonder if——

Mr. CONYERS. The gentleman's time has expired, and we're under the pressure of bells summoning us to the floor.

Mr. JOHNSON. Thank you, if I might ask one question, has the D.A.'s office been investigated for depriving the students of Jena, Louisiana, of their rights to protest by threatening them with taking away their——making their lives disappear? Is that a civil rights violation that has been investigated by your office?

Mr. WASHINGTON. Let me just say that your recitation of the facts——

Mr. JOHNSON. If you would answer my question.

Mr. WASHINGTON [continuing]. It varies greatly from the facts that in the Parish appears to exist.

Mr. JOHNSON. Has your office investigated the District Attorney for violating the civil rights of the students by issuing that threat to them to try to stop them from legally protesting?

Mr. WASHINGTON. That situation did not occur, as best I know. That's what I'm trying to get at here.

Mr. JOHNSON. The D.A. Did not say that at an assembly?

Mr. WASHINGTON. Yes, the D.A. Did say those words.

Mr. JOHNSON. Surrounded by uniformed police officers?

Mr. WASHINGTON. No, sir. Not as best I can tell from review of the situation.

Mr. JOHNSON. Well, has it been investigated by your office?

Mr. KING. Mr. Chairman, that's the seventh question asked after he ran out of time. I'd ask that we move along.

Mr. JOHNSON. But he still has not answered.

Mr. CONYERS. Um——

Mr. JOHNSON. He still has not answered.

Mr. CONYERS. Let's see if he is going to answer, and then I would like to try to get in Betty Sue Sutton before the bells ring.

Mr. JOHNSON. Yes or no, sir?

Mr. WASHINGTON. My answer is the Congressman's statement of the facts didn't occur in that fashion. If it had occurred in that fashion, perhaps there would be an investigation, but they did not occur in that fashion.

Mr. CONYERS. I thank you very much.

The Chair is happy to announce the newest Member to the Committee, the gentlelady from Ohio, Betty Sue Sutton.

Ms. SUTTON. I thank the Chairman. I think the sum of answer to that question was, no, that didn't happen, that investigation.

There are so many things that I could talk about, and I have a statement that I'm going to submit to the record, and everybody who is interested certainly you will have access to that, and it parallels much of, frankly, what my colleague just recited about this situation.

I want to thank the Chairman for this hearing. Because while we're talking about the events of Jena today, make no mistake about it, this is a national issue. And I would just like to take this

moment to pull together some of the things that we've heard here today.

We've heard some discussion down the lines of what we can do, you know, in our schools. We talked about the opportunity that exists with No Child Left Behind, and I think absolutely we need to pursue that. And to the Southern Poverty Law Center and this program that you provided for us, wonderful, wonderful program to implement.

But, as I think Mr. Ogletree also pointed out and Reverend Moran, I have to tell you you said something here today that I think is really important and bears repeating, and that was that there is a cry for peace, love and harmony, but there is no cry for justice.

So while we're pursuing these other elements that we have to pursue to make ourselves into the nation that is worthy, we also have to have our legal system. And one is not a substitute for the other, but they must work in tandem. And I'm really, really concerned when I hear it acknowledged that this was—the hanging of the nooses under these circumstances—and I want to get this right—was a hate crime. Because the threatened use of intimidation, force, injury because of race or exercising a constitutional right of going to school qualifies this as a hate crime.

Now, we all agreed that was a hate crime; and yet there was no response from our legal system of what we acknowledge as a hate crime. So why do we say it is a hate crime? If we don't act on it like a hate crime, then I don't really believe it. I don't believe that we really believe it is a hate crime if we're not acting on it.

So what if there had been a legal response and we heard there were actions that could have been taken? What if there had been a legal response that said not just for those students but said for the United States of America that this is unacceptable to all of us. It harms us all as a country. What if that response had been taken?

Now, I know it's a hypothetical and we can't get a complete answer, but explain to me how the people out there in this country can accept that our justice system could do no better than to go in on June 12th, 2007, to start to address this issue?

Ms. KRIGSTEN. I want to make clear that immediately after the incident that happened in August, 2006, the Department of Justice had two responses. Immediately, the Education Opportunities Section sent a representative to go talk to school officials. More importantly, the Federal Bureau of Investigation sent an agent in that area to investigate the allegation that there had been this noose hanging.

Now it is undeniable that a noose hanging is a symbol of hate and racial violence. In this situation, it was not appropriate to pursue Federal charges for reasons that have already been discussed.

What I want to make sure the Committee is aware of and that the American people are aware of is that the Criminal Section of the Civil Rights Division is taking all of the allegations of noose hangings around this country extraordinarily seriously. There are open investigations in numerous cities that are going on right now.

The Criminal Section has formed a task force to coordinate the Division's response to these noose hangings, and we are working very closely with the FBI and local U.S. Attorneys offices.

Ms. SUTTON. With all due respect, and my light is about to turn red, too, but there was no legal consequence. As you said, you sent them in; and there was an educational response, which is good.

I'm sorry—and perhaps we should shift over to the gentleman.

Mr. COHEN. There was no educational response. That's the problem, and there's some dispute about the nature of the suspension or whatnot. But there was no public apology, there was no educational component to it; and, had there been, perhaps that would have been sufficient. Who knows?

Right now, people call for the prosecution of the noose hangers to balance the scales because of what happened to the Jena 6 in being overcharged. I think that's a wrong-headed response. I just think that in the beginning it was dealt with very, very poorly. And, you know, I don't fault the U.S. Attorney for not filing charges, but I do think that the way the school handled it was a recipe for disaster, and that's what happened.

Ms. SUTTON. I appreciate the gentleman's remarks. Thank you.

Mr. CONYERS. Reverend Sharpton, did you want—

Reverend SHARPTON. Yes, I just wanted to say I think Congresswoman Sutton hit the nail on the head in terms of we keep trying to, in my opinion, mistakenly place the school as the response of the criminal justice system. I think the reason why we are seeing what some call copycat nooses, and I would call just racists that feel empowered, is why wouldn't they? Nothing happened when a noose was hanged. And when people get the message they can do this and nothing will happen, they will continue to do it.

Yes, beating a kid is egregious but was a response. There was an overresponse. There was no response by the criminal justice system at all. A school having a seminar or suspension is not a criminal justice response that would tell me anywhere in the country that I'm going to pay for that if I do it, and that's why we see nooses all over America.

Mr. CONYERS. And we thank the Congresswoman from Ohio for her very lucid questioning. The Chair wants to welcome Faye Williams, Esquire, the national chair of the national Congress of Black women. And we appreciate her being here. And I recognize the gentlelady from Texas for a unanimous consent request.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I'd ask unanimous consent—I'm not sure if it has already been done—to put into the record two items, 6 lessons from Jena, teaching tolerance, that is the southern poverty law center. I'd ask unanimous consent. And I'd ask unanimous consent that answers most of the questions to put this graph from the Department of Justice that shows—

Mr. CONYERS. Without objection, so ordered.

Ms. JACKSON LEE. 50 cases were prosecuted. That is all under racial violence and hate crimes.

Mr. CONYERS. We stand in recess, but we'll come back immediately after the vote. And I thank the panel for its endurance.

[Recess.]



Mr. CONYERS. The Chair has been slow in reconvening the hearing because the interaction has been so important between many of the parties that are interested in what is going on here today, and I think it is a very healthy interaction indeed. The Chair recognizes Artur Davis of Alabama, himself a former assistant U.S. attorney.

Mr. DAVIS. Thank you, Mr. Chairman. Let me thank the panel, Reverend Sharpton, good to see you. Let me thank the panel today. The downside of Mr. Ellison and I being fairly junior Members of the Committee is every brilliant insight and every passionate insight that could have been offered has, no doubt, been offered already. But there are some points I do want to make, and I'll try not to cover old ground. Mr. Washington, let me begin with you. And this is not an admonition in any way, but I think since you're one of the two people on this panel that is on the ground literally in dealing with the issues in the community, I do want to make one observation.

It strikes me as someone following this case from a distance as someone following this case through television, from the news media that there were a lot of missed opportunities to prevent this situation from ending up in the very tragic place it ended, because everyone in this room thinks it ended in a tragic place, tragic place for the six young men and their families, tragic place for the young White man, tragic place for the community. This is what is notable to me, though. How in the world do you have a school in the modern era that has a principal that has administrators and that isn't moved to action by a White folks tree or by there being some ambivalence at this school or some sense at this school that, well, there is a place where the White kids hang out but Black kids don't hang out there. Even before you get to nooses, I don't understand how that kind of physical symbolism, that there is a place that is off limit to certain kids because of their race, I don't understand why that didn't have people up in arms.

And frankly, Reverend Al, the sense that I get is there was a whole lot of a sense of this is kind of the way things happen in Jena. And we don't like it, but this is kind of the way it is. And if that mentality and that spirit had prevailed in my State and the State where your mom lives, Alabama, God knows where we would be. If we had settled into this attitude of, well, there are just certain customs and traditions, I don't understand why the good people in Jena, why the school administrator was not troubled by the very fact that there was a physical kind of segregation at the school was the first point.

The second point, I want to say something responsive to one of my colleagues on the other side of the aisle, Mr. King. He was making the observation that the noose is a speech act. So we shouldn't be so troubled by that. And I was surprised to hear him say that, frankly, because I thought that the conservatives told us over and over that our moral standards in society aren't defined simply by what we can send people to jail for and what we can sue them for. Our moral standards are also defined by what draws our outrage. And I don't care whether or not you can prosecute somebody just for hanging a noose. I'm sure good lawyers can argue both sides of that.

We know the DA here could be creative when he wanted to. And I'm sure we can argue both sides of that. I'm sure we could probably argue both sides in terms of a civil liability theory. But that is not always the standard, whether or not you can sue somebody or put them in jail. The question is what outrages us. The next point I want to make, all of the copycat business with nooses in the last several weeks in this country, for anyone who wants to know why an is speech dangerous, well, that is an answer because speech can be provocative, and we use the word "provocative" sometimes as a synonym for that which titillates. "provocative" can also mean literally what it says, to provoke, to instigate others to action.

The final point that I want to make—and this is frankly the most important one. We are talking first and foremost about children attacking children on both sides. We're talking about Black children attacking White children and Black children attacking Black children and that is enormously troubling to me because we used to have this belief in society that racism lost traction as it moved down the generational lines. We used to have this belief in this society that, well, as younger people came along, they were some how purer, they were less diluted, they were not likely to be as contaminated by racial bigotry. I am bothered by seeing a resurgence of racism among young people. And that is the question I would ask someone on the panel to address. What do we do with this regeneration of racism among children who ought to be the people most naturally coming together in this society?

Mr. CONYERS. I thank the gentleman. We're pleased now to call from New York Mr. Anthony Weiner, who has served with great distinction for the time that he has been on Judiciary Committee.

Mr. WEINER. Thank you, Mr. Chairman. Let me just ask, you know, I would observe that it seems to me that the panel is divided between two groups of people, one group that argues that government is powerful and can have an influence over the outcome here and over leading us in prosecuting hate crimes, who can lead us to a place where we understand there is a national imperative that transcends what a local politician might want to see happen.

And another group that is saying they are basically powerless to act until a certain series of things happens and a certain set of dominos falls and perhaps even long after someone sits in jail for a race driven prosecution. And rather than have the forces of government arguing for government power and government authority and people in the outside arguing that government is too powerful or doing too much, it seems to be inverted. And it strikes me that as I read the testimony of my good friends from the Department of Justice, there is mention of the Department's Community Relations Service, there is mention of the Civil Rights Division's Educational Opportunities Section. Good people who do good work no doubt. But it isn't until far into the testimony that we talk about the FBI, talk about the power for the U.S. attorney's office to prosecute crimes. This could have been a conversation we had in the 1950's about the government saying, you know, what this is the problem of localities, it is not the Federal Government. And we had a whole civil rights—we had broad chapters of civil rights legislation written to empower the Federal Government to go into com-

munities where rights were being violated and say, you know what, there is a higher imperative here. Just because you're elected by a locality who may want you to have a racial prosecution doesn't mean that it is right.

And it sounds like Professor Ogletree has articulated on several occasions and Reverend Sharpton, although not from a legal perspective, but basically the same thing, is that you simply have seemed to have kept in your quiver the most powerful arrows that you have to deal with this problem. And to communities outside Jena, where I assume these types of things are going on frequently, what is the message that is sent to a local prosecutor or a local sheriff or someone looking to make points? They would look at this case and say you know what, that is not a bad way to get re-elected in some towns. They probably look at this and say look at the attention I'm getting, look at me on the side of prosecuting these Black kids and defending the White community and the like and the Justice Department is actually saying let's see how it works out, let's see what happens next, you know, let's see where it goes, let's see how long they sit in jail.

It seems to me that the tenor of the Justice Department in the United States Government should be that we learn what happens when you sit back and watch and say let's see what local authorities come up with. This is not dissimilar, I think my friends at the Justice Department would realize this is not dissimilar from a debate that went on in this country when those who defended the violations of people's civil rights and said it is really not the Federal Government's role to be going in, these are local laws, this is a local prosecution and the like.

Is Professor Ogletree wrong that we have empowered you all to act more aggressively than you have and if not, tell us. This is the Committee of Congress that makes laws and now it is back in the hands of people who really care about civil rights. So we're prepared to act. If we need the Jena civil rights amendments of 2007 in order to make sure that things like this don't happen again, tell us. But I have to tell you, I don't really see that. I see what this comes down to is an excessively timid interpretation of the rights of the tools that we already granted to the Justice Department.

And if this was an Administration that had been out there saying, you know, going out and seeking these types of things in the past, maybe I'd say, all right, this one just kind of slipped through, you're caught up now and you're really going to get on it. If I read the testimony in response to questions today, it is more or less saying just wait, we're going to let things play out for a couple more years because this has now been a couple of years.

So I guess the question I would ask is is the Justice Department testifying today that if they had additional powers, they might have been able to or could today deal with this situation in a more forceful way that not only makes it clear that what is going on there is immoral or troubling or unethical, that it is illegal in the eyes of the Federal prosecution and is going to be stopped?

How far does it have to go before you say, ah, we've reached the point now where we can take the arrow out of our quiver that was given to us by Congress in the 1960's that people died for and start to use them. Do you need additional laws to be passed?

Ms. KRIGSTEN. I'm grateful to have the opportunity to assure you, Congressman and the Committee, of the leadership that the Department has shown throughout this Nation. The number of important and high profile hate crime prosecutions that have taken place in the last few years is remarkable. We can talk about the prosecution in California, the *United States versus Saldana* case in which a gang, a Latino gang was targeting African Americans. And the individuals who were responsible for those acts actually received life imprisonment for their commission of Federal crimes. We can talk about—

Mr. WEINER. That part is in your testimony. I read your testimony cover to cover. Could you respond to my question now?

Ms. KRIGSTEN. Yes.

Mr. WEINER. Thank you.

Ms. KRIGSTEN. One of the questions that you asked was the leadership of the Department of the Justice.

Mr. WEINER. No, no, no. Let me refresh. I did not ask that question. I asked are there additional laws that—I made an observation about the leadership department being lacking. And I think you should stipulate to that at this point. But if you choose not to, that is your decision. My question was a succinct one. Are there additional laws that you think you require had Congress and the American people not spoken forcefully enough for the civil rights legislation that exists that says the Federal Government will no longer, like it did in the 1950's, sit back and say it is up to the local sheriff and his dogs to decide what the laws are.

Do you need the Jena civil rights amendments of 2007 to make it so you can go ahead and prosecute things like, or are you saying you've got all the laws you need and you just can't figure out a way to use them?

Ms. KRIGSTEN. The question wraps in several different concepts, and what I want to do is make sure I understand what you're asking for. If you're asking whether the Department has shown leadership in the prosecution of civil rights cases across the country, I'm happy to address that. We, last year in the Criminal Section of the Civil Rights Division, convicted the largest number of civil rights—have the largest number of civil rights convictions in the entire history of the Criminal Section. The activity in that criminal section of Federal prosecution is unprecedented and remarkable.

So if you're asking whether there is leadership, I believe that our record in the last few years speaks for itself. If you're asking whether there are additional laws that are needed to address, for example, some of the activity that has happened in Jena and you've made it very vague. So what I want to do is address each of the points you've raised. If you're asking whether there are additional laws that are needed to address the noose hanging in August of 2006, what I will tell you is the reason that that prosecution was not initiated by the United States attorney and the Department of Justice was not because the law was lacking, it was because these individuals were under 18 years old, which makes them children in the eyes of the law. And it is important that the Committee understand and the American people understand that once we're talking about juveniles and a juvenile—

Mr. WEINER. Aren't you defining a shortcoming in the law, Madam? Are you defining a shortcoming in the law that if it were changed would allow you to prosecute this with more fervor? That was exactly the question.

Ms. KRIGSTEN. The concern that I've heard raised by this Committee is the prosecution of juveniles in an adult court. And so it is up to this Committee, of course, to decide whether it wants to propose an amendment to allow juveniles to be prosecuted as adults in the Federal judicial system. But what I will say is that at this point, because these individuals were juveniles, that puts them in the juvenile justice realm, which means that their proceedings are secret. They are juvenile delinquency proceedings instead of court proceedings. Anything that would have happened to these individuals in a juvenile delinquency proceeding would have been private, not available to the public, not available to the press and would not have been available to be the deterrent effect that the Committee seems to believe is needed.

When the Committee talks about deterrence and the leadership of the Department, I want to make sure the Committee understands the Department of Justice relies on its prosecutions throughout the country as leadership in the area that it is showing in its hate crime prosecutions in addressing the racial violence.

Mr. WEINER. Thank you, Mr. Chairman.

Mr. CONYERS. Thank you very much, Mr. Weiner. This has led us in a very important direction. I'm grateful to you for it. The Chair recognizes the gentlelady from Wisconsin, Tammy Baldwin, whose contributions to civil rights and justice are well-known by this Committee.

Ms. BALDWIN. Thank you, Mr. Chairman. And thank you, especially for holding this incredibly important and timely hearing on the Jena 6 case. I think it would be difficult to overstate my own gratitude to you not only for your leadership generally on civil rights, but for your championship earlier this year of the local law enforcement hate crimes prevention act which I'm going return to in a moment. And I also know that my own constituents in the important State of Wisconsin are very grateful about this opportunity to continue what has become not only a national dialogue, but frankly, an international dialogue about the Jena 6 case, hate crimes, racial inequality and race related violence.

I also want to extend my thanks to the witnesses who have been here today, and I apologize for my belated arrival at this hearing. Sometimes you pinch yourself about what you get to do in this job, and I've been shuttling between a markup on mental health parody of enormous importance and negotiations and discussions on employment nondiscrimination. So some very weighty matters that are being discussed.

Thank you all for being here. Now, I was privileged to help work on the passage of HR 1592, the Local Law Enforcement Hate Crimes Prevention Act. And I had the opportunity to become intimately familiar with the Federal prohibition against hate crimes enacted as part of the Civil Rights Act of 1968. And as I stated in this Committee during our markup of 1592 earlier this year, I believe that hate crimes legislation is important for both substantive and symbolic reasons.

The legal protections are essential to our system of order justice. But on a symbolic basis, it is just important for Congress to annunciate clearly that hate-based violence will not be tolerated, it is just plain wrong. We have certainly made great strides as a Nation since 1968 and our hate crimes laws serve as a cornerstone for eliminating violence based on irrational fears and hatred. Hate crimes are also among our Nation's—hate crimes laws are among our nation's strongest statement that racially motivated violence is unacceptable and wrong. Yet these legal protections can truly only be as effective as their implementation.

And what troubles me so deeply about the Jena 6 case is that our efforts to extend legal protections against violence motivated by hate is an empty effort both substantively and symbolically unless the implementation of these laws are swift and effective.

So I'm incredibly disappointed in the collective law enforcement reaction to the August 2006 schoolyard noose hanging incidents that served as a catalyst for the episodes of racially charged violence in Jena. And I am still unclear as to why two government agencies, the U.S. attorney's office and the FBI that investigated the noose incident, determined that hate crime prosecutions could not be pursued.

And I'm also unclear why LaSalle Parish district attorney Reed Walters did not pursue hate crime charges under the Louisiana statute. District Attorney Walters wrote in *The New York Times* in a piece last month that the nooses broke no law, a statement which directly contradicts Mr. Cohen's written testimony that the Louisiana statute creates a hate crime for any institutional vandalism and criminal trespass motivated by race.

And also unclear about how to understand Mr. Walter's decision to pursue second degree attempted murder charges against Mychal Bell. One of the six teenagers charged in the case in light of his finding that the noose incident did not warrant any charges. Was this a singular case of excessive prosecution or a window into the inequities within our justice system and our juvenile justice system. Whether in Jena, Louisiana, or in Wisconsin or any other State, violence like this has no place anywhere but let alone in our schools and nor does a racially hostile school environment.

But as I said, we have hard-won laws aimed at protecting our children against violence motivated by hate. And we've tried as a Nation to take a strong stand both substantively and symbolically against such inequity. So are our hate crime laws effective? I'm getting back to the same sort of big questions that my colleague from New York raised. What can we do to mitigate these injustices in the national criminal justice and how do we understand the lack of prosecutions as well as the excessive prosecutions in Jena and around the country? I know these are big questions, but perhaps just starting with the hate crimes question itself, are they effective and how can we make them stronger?

Mr. CONYERS. Well, that's a great question to ask after your time has expired, but let's give it a shot. Let's see if we can quickly move down the table and get some responses. You know, we're not trying to solve this historic problem in one session. This is going to be something that goes throughout the 110th Congress, and my

guess is even beyond. So let's go right down the row to Ms. Baldwin's query.

Ms. KRIGSTEN. On behalf of the Federal Government, I can tell you that hate crime laws are effective and they are being used aggressively across the country. We're prosecuting cross burnings, we prosecuted a case in Ohio where individuals put mercury on the front steps of a couple, a bi-racial couple and their children with an intent to drive these individuals out of their home. Those perpetrators are now in prison. The Saldana case that I mentioned. We can go through a laundry list of cases in which the Criminal Section of the Civil Rights Division along with the FBI, along with our partners in the local U.S. attorneys offices, have used the tools provided by this Congress very effectively across the nation and we'll continue to do so.

Mr. COHEN. Thank you. I think you're absolutely right. It is inexplicable how Mr. Walters could say that there were no crimes that could have been prosecuted there. There clearly were crimes that could have been prosecuted in the noose hanging. Again, though, I want to make clear that we are not here to call for the prosecution of noose hangers. What we're here to call for is a level playing field, an equal justice under the law. And that is not what has happened in Jena. Prosecutor unfortunately sees race. And when that happens, there are calls for retribution and this kind of stuff has to end. Someone has to have enough common sense to say enough is enough. I hope people file charges against Mr. Walters, get him removed from office. I hope the people of Jena reject him when he runs again. If he does. But I think your comments are right on the mark.

Reverend SHARPTON. I concur with Mr. Cohen. And in fact, let me make a record, Mr. Chairman, that national action network has filed charges with the disciplinary and ethics committee in Louisiana and they have acknowledged receipt of it. But I think that Mr. Cohen's statement applies for us national action network and I would also in this particular matter speak for Martin Luther King, III, and realize the dream because we've operated jointly in this. We addressed this as an even playing field. This is not about prosecuting one side and not the other. It is how do you rationalize no prosecution based on juvenile status for the hangman noose and then prosecute juveniles the same age as adults for a fight.

And I think that a lot of confusion, and I think Congressman Weiner addressed this properly, a lot of confusion was one that there was no immediate reaction by the Justice Department to explain to us how kids of the same age, one becomes adult and the other remain juvenile. I mean, explain that. The same age. They all go to the same school, same age. And I think we fabricate this—well, did they have anything to do with the noose. It doesn't matter, it is the same prosecutor.

And I might add for the record that even when they were—there was a record, they should expel the kids that was overturned into a suspension and the district attorney is the general counsel of the school board that overturned the expelling. And even if they were expelled, that's still not the criminal justice system. I think what we're begging for, Congresswoman Baldwin, and Congressman

Weiner, is an even playing field where the Justice Department responds by saying there must be equal protection under the law.

And Congressman Weiner's point that he made very eloquently, and Mr. Chairman, I'll tell his folks at home that he spoke very eloquently today, he is correct. If we can't turn to the Federal Government, as we have for the last 50 years, then what are we telling young students that marched at Jena, where do they turn and how do we tell them that we want peace and we want nonviolence if the Federal Government is saying we're going to wait and see what happens, okay, he has done 10 months, let's see what happens in 13 months? We can't keep telling young people that.

Mr. OGLETREE. I'll just briefly say this. I agree with those comments. I think Congressman Weiner and Congresswoman Baldwin and Congressman Artur Davis who left, it seems to me that to make this record complete, and really get answers to the questions which you haven't heard today, you have to propound the question what authority did the State and Federal officials lack to create a fair and equitable criminal justice system and educational system in Jena. And what resources the State and Federal Government lacked to bring future actions.

Taking into account, we know you've prosecuted all these cases. We're talking about this one in this city that everyone is talking about. My sense is that the best way is to propound questions and get answers. And they'll tell you whether the government is satisfied, they have all the authority that they need and don't need any more. And if they say that, I think we've got a very different role for this Committee to play in addressing what we've already heard about.

Reverend MORAN. Thank you. Mr. Ogletree, I really thank you for elaborating on some of the things the Justice Department has been stating. I think the main initiative now is considering what is going in Jena, not considering what they've done in past incidents in different cities and different States. We have six Black boys, young men who are charged unrighteously and we're here today to see that fair judgment is dealt out to them. Also, I was quiet a few moments ago, but I want to elaborate on what Mr. Washington said about the TV broadcast that he himself was on. I seen the TV broadcast. And personally, I took it as though he said that your hangmen nooses were not an act of hate. That's the way I received it. And that's the way our community received it and that has a lot to do with the copycat mentality it has a lot to do with it.

Because if it had been ruled out not be a hate crime. There would have been a lot of people who would have been scared to even look at a noose or think about a noose. Because, in fact, it was ruled out not a hate crime and because it was said not to be a hate crime, it has a lot to do with the copycat mentality. And the stupidity of anyone that would hang a noose after hearing that it is not—it is not a hate crime, someone would even be so stupid as to commit a crime as far as hanging somebody.

If we continue to allow people to see that this is not a hate crime, somebody is going to hang somebody. And I wonder whose eyes are we—who are we going to be putting our eyes on then and I would



think it would be the Justice Department for ruling out a noose as not being a hate crime.

Mr. CONYERS. Thank you very much, Ms. Baldwin. And I want Reverend Sharpton to know that Mr. Weiner speaks eloquently at all of these hearings.

Reverend SHARPTON. I'll stipulate to that.

Mr. CONYERS. And now I'm very pleased to turn to Ms. Debbie Wasserman Schultz, the gentlelady from Florida.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman. Mr. Washington and Ms. Krigsten, I need to get a sense because I have repeatedly heard both of you say that because these children were under the age of 18, it was not within your discretion prosecutorially to pursue a hate crimes charge; is that accurate?

Mr. WASHINGTON. Yes, that is accurate. It is not a matter of we wouldn't pursue hate crimes charges. It is a matter of we could not pursue hate crimes charges.

Ms. WASSERMAN SCHULTZ. That leads me to believe that it is your testimony that you declined to charge them with a hate crime because they are under 18?

Mr. WASHINGTON. That's correct.

Ms. WASSERMAN SCHULTZ. Okay. Is there anything in the Federal hate crimes statute that specifically excludes minors? Does it say anywhere in the law that you cannot charge a minor with a hate crime?

Mr. WASHINGTON. 18 USC 5036, I think it is the statute that governs—did I get that right, 5036? Okay. I'm sorry. We could charge them under 18 USC 1845, but we get back to the limitations for juvenile proceedings for juveniles that is also in the United States Code which puts us in a position of having to find juveniles who have committed what is called a Federal—a felony crime of violence or some of the enumerated crimes that are in that statute.

Ms. WASSERMAN SCHULTZ. But there is nothing in the law that specifically prohibits you from charging a minor with a hate crime, other than process, the order in which you'd pursue a case against a minor?

Ms. KRIGSTEN. If I could add something. Mr. Washington is absolutely correct. And I think there may be a matter of semantics that I want to make sure is cleared up. When we talk about prosecution, that is a term that is used in adult court. And these individuals, because they were juveniles were not eligible to go to adult court. Now If we're talking about juvenile delinquency proceedings, that possibility was there to address the August 2006 incident.

Ms. WASSERMAN SCHULTZ. But when a juvenile is charged with a crime in juvenile court, can it result in them being held in a—

Ms. KRIGSTEN. It can. The result of a finding in juvenile court is a finding of delinquency, not a conviction. One of the—

Ms. WASSERMAN SCHULTZ. You're right. That is a matter of semantics. So when you're charged with a crime whether a juvenile or an adult, If you're held in a facility in which you cannot voluntarily leave, it doesn't matter whether it is called a prosecution or a case against a juvenile or whatever you choose to be calling it. But what Reverend Sharpton or Professor Ogletree and all of the people other than you have been saying is that this is a matter of

equality, of equal justice under the law that clearly does not seem to have been applied here. Here is my other concern.

Congressman Weiner asked you directly whether there was anything that you needed to change in the law in order to have pursued hate crime charges against these minors. From what it sounded like to me said no, that your Department has led the way in pursuing civil rights cases and that you are doing just great. Well, if process is what has prevented you from pursuing hate crimes against minors, then it appears that the law needs to adjust the process so that those things can be pursued simultaneously, wouldn't it?

Ms. KRIGSTEN. I'm happy to have this opportunity to clear up any confusion. There have been several statements during this hearing both from panelists and from Members of the Committee about equality between the August 2006 noose incident and the December incident.

Ms. WASSERMAN SCHULTZ. I'd like you to answer my question about the process and whether the law needs to be adjusted so that hate crime charges could be pursued without regard to juvenile proceedings being pursued against minors.

Ms. KRIGSTEN. And with all due respect, I'm answering it the best way I know how, which is to say that looking at the way the Federal Government looked at the August 2006 incident is completely separate from how the State government looked at the December 2006 incident. We're not talking about the same offices. We're not even talking about the same system of government. The December incident was charged by a State prosecutor in State court. We're talking about Federal charges in the 2006 incident. And so with that framework, what I can say is as a matter of policy at the Department of Justice, this case was declined because these individuals were juveniles and because there was a noncriminal alternative to prosecution that was reached by the school district. Immediately after the incident—

Ms. WASSERMAN SCHULTZ. What does that have to do with the price of fish?

Ms. KRIGSTEN. Looking at the noncriminal alternatives is one of the principles of Federal prosecution that Federal prosecutors are obligated to consider in considering any charges. The decision and the manner in which this decision was reached is consistent across how the Criminal Section of the Civil Rights Division reaches charges in all Federal cases.

Ms. WASSERMAN SCHULTZ. Then that would seem to cry out for a change in the law so that it didn't have to be pursued that way any longer. Ms. Krigsten, I have to be honest with you, to follow in the same vain that my colleague Congressman Weiner did, caution is advisable in many cases. Too much caution results in impotence and that appears to be what has happened in the pursuit of justice and equal justice under the law in this case specifically.

And, Mr. Chairman, I also appreciate that you held this hearing, that you called us together to examine this more closely because one would think that in 2007, something that happened in Jena wouldn't happen. And no one is discounting any of the crimes, the pursuit of justice against any of the crimes that were perpetrated. It is just that that pursuit should have been handled equally.

And, Mr. Chairman, I have to tell you that as someone who has witnessed in my community the spraying of swastika stickers on homes and synagogues, and if you substitute a swastika for a noose on this tree, I would want the same treatment that the people in the community of Jena are asking for, and I assume that we might have a different reaction. But I don't trust that we would, under this Justice Department. I yield back the balance of my time.

Mr. CONYERS. I thank the gentlelady from Florida. Now normally the last Member asking questions is the final person on the Committee, but we regard Keith Ellison as our cleanup hitter. The gentleman from Minnesota has been very important in this 110th Congress. And we recognize him at this point.

Mr. ELLISON. Thank you, Mr. Chair. Professor Ogletree, do you agree that Federal delinquency proceedings against the noose hangers was legally impossible? Do you agree with that statement?

Mr. OGLETREE. No. As I said earlier. There were both State and Federal provisions available to pursue this and they were—the nice words, they were declined.

Mr. ELLISON. Right, they were declined. Mr. Cohen, I know how you feel about the question of prosecuting the noose hangers. But let me just ask you this question. I'm asking this just from your legal analysis. Isn't it fundamentally a question of discretionary latitude?

Mr. COHEN. That is correct. You could absolutely prosecute the noose hangers both as juveniles under 245 and as adults because the hanging of a noose was a crime of violence under the United States Code. So as long as the noose, as long as they were over 15, they could have been tried in adult court under section 1850.32.

Mr. ELLISON. So, Mr. Washington, you've used your discretionary latitude to decline the juvenile proceedings for the noose hangers; isn't that true?

Mr. WASHINGTON. Actually, what our process is——

Mr. ELLISON. I need a yes or no.

Mr. WASHINGTON. Well, I'm trying to answer your question the best——

Mr. ELLISON. No. I'm not going to let you waste my time. I need you to answer my question.

Mr. WASHINGTON. My office works with or actually the Civil Rights Division——

Mr. ELLISON. Sir, I've got 5 minutes. I'm not going to tolerate you wasting my time. I need you to answer the question. You used your discretionary latitude to decline the charges on the noose hangers. Isn't that a yes?

Mr. WASHINGTON. No, sir.

Mr. ELLISON. Okay. Well, we've got two learned counsel that says that is not true. Now, in the course of my time on this Committee, we have dealt with eight U.S. attorneys who were fired because they did not slavishly obey the dictates of the Bush Justice Department. And we had some people who got promoted, benefits accrued to them because they did do what the Justice Department wanted them to do under Gonzalez and Bush. You still have a job, don't you?

Mr. WASHINGTON. Yes, sir.

Mr. ELLISON. And I almost fell off my chair when you invoked the name of Martin Luther King to say that you were somehow the culmination of his work. Sir, I would expect you to quit in protest based on that, based on your inability to use your discretionary latitude to charge these noose hangers. That is what I would expect of somebody who was truly in fidelity with that great legacy of Martin Luther King.

Let me say that Jena 6 is obviously the occasion that we are here. But for those folks who are not from Jena, you know and I know that we're outraged because we all have some Jena 6s. We've got some Minnesota Jena 6s. The fact is is that nationally, according to the testimony of Professor Ogletree, Black students are 2.6 times more likely to be suspended than White students. Overall, the numbers of students being suspended each year increased due to subzero tolerance policies. But that is just school discipline. The fact is juvenile justice data mirrored disparities in the school.

2003, African-American youth were detained at a rate of four to five times higher than that of their White counterparts. Aside from the issue of the civil rights decision and the hate crimes stuff, what about Black youth and Latino youth in the criminal justice system and the overincarceration of Black people, we live in a country that incarcerates more than 2 million people. Don't we have a system that is essentially using the criminal justice system to do what the Jim Crow system did in the past? Isn't it just an extension? Reverend Sharpton, could you elaborate on this?

Reverend SHARPTON. No. I think you hit it on the head. I think the challenge of the 21st century is exactly that, Congressman Ellison. I said in my statement on September 20 in Jena with Martin, III, and others that we've got from Jim Crow to James Crow, Jr., Esquire. He is a little more polished, he uses different techniques. But it is the same result at the end of the day. And no one salutes the Chairman more than we do for calling this.

If you start in August of '06 and go to the December, the scorecard is at the end of several incidents, six young Blacks are standing as adults under indictment or in jail and no Whites are after several incidents. That's the bottom-line. You can't get around that. And a Justice Department that says we're looking at, we'll study it, maybe, then what do we do? So there are those of us that respond, even though we'll be attacked—Martin, III, Father Michael Pfleger is on his way to Jena. We are only responding because they won't respond.

Mr. ELLISON. Thank you for acknowledging the presence of Father Michael Pfleger, a hero and many years of service, sir. Thank you. But I just wanted to go back to this eight U.S. Attorneys things because this is taking up a lot of time here. And one of the things that always concerned me was not just the eight who were fired because they wouldn't bring fake voting rights cases, but the people who stayed and kept their jobs. These people are the ones who I'm truly concerned about. And I guess one of the things that I would like to know is, Mr. Washington, have you prosecuted other juveniles in your tenure as U.S. attorney? Have you prosecuted other juveniles?

Mr. WASHINGTON. No.

Mr. ELLISON. Because let me tell you, I've defended juveniles in Federal court. Let me tell you, sir. I spent 16 years as a criminal defense attorney and I've tried over 100 cases to a jury, and I've defended juveniles in Federal court. So you can't tell me that the Federal Government doesn't prosecute. You prosecute them for having 5 grams of crack cocaine. You know you put them in jail for that. We have incarcerated generations over your drug war. And I say it is yours because you will not step away from an unfair system. What about the selective justice? You're telling me you have never prosecuted a juvenile? We're going to find out. Is that your statement before Congress?

Mr. WASHINGTON. In my district—and you're asking me, I guess, about the Department of Justice. And I cannot speak to whether or when or how we prosecuted juveniles.

Mr. ELLISON. Right. Well, let me just say this, Mr. Washington, you've been on record saying that you believe that the noose hangers didn't commit a crime and now you're saying today that they did. I'm glad to see that. I want to give you credit for that. Have you changed your mind? Does that explain your change in testimony?

Mr. WASHINGTON. I don't believe so, sir.

Mr. ELLISON. Have you come to see the light? Is that why you're saying that it is a crime today?

Mr. WASHINGTON. I don't think I've changed my testimony.

Mr. ELLISON. Well, you changed your statement. Do you agree with that?

Mr. WASHINGTON. I don't think so.

Mr. ELLISON. Well, the Reverend seems to have another viewpoint. Reverend Moran, do you have another thing you'd like to share on that?

Reverend MORAN. Well, I think a gun on school property is a Federal offense, is it not?

Mr. ELLISON. I think that it certainly could be. What about that case, about the guy having a guy pointed—

Reverend MORAN. Justin Barker, the one that was accused of being jumped on at the school.

Mr. ELLISON. Had a gun at school?

Reverend MORAN. Yeah, yeah.

Mr. ELLISON. Did he get prosecuted by a U.S. Attorney?

Reverend MORAN. Nobody.

Mr. ELLISON. If you claim to be a beneficiary of the work of Martin Luther King, you have got to stand on that. It is not a matter of career advancement. Martin Luther King did not do his work so you could get a Lexus and a nice house. It is not just a matter of your own career advancement and buying consumer items. It is fidelity to a set of ideas. Reverend Al, what do you expect of this new generation of African Americans who have benefited from the opportunities opened by the works of people like you, Reverend Jackson and Martin Luther King?

Reverend SHARPTON. I think that all that one can expect is that they'd keep the door open that they walk through and even make it more open for the generations behind it. We, I think, have the right not to expect that they would become the apologists for the element that would have prevented their coming to existence.

We're not asking them to show favor. We're asking them to do justice, do what is fair. Mychal Bell is in jail today on an unequal situation. If he cannot look to Federal officers who wouldn't have been there, if it wasn't for people marching, who is he supposed to look to? So for people to give up their careers so you can have a career and you do not use your career to make sure other careers are justly treated is the height of ingratitude. Yes, Dr. King had a dream, but he wasn't asleep to get the dream. He woke up to get the dream.

Mr. ELLISON. Mr. Washington, I just have a last question.

Mr. CONYERS. The gentleman's time is nearly expired.

Mr. ELLISON. I just have one more question for you. I mean, the worst thing that can happen to a young person is not that they be prosecuted for hanging a noose. Even if they were prosecuted, wouldn't it perhaps prevent them from ever going into a life of racism and perhaps step away from that kind of lifestyle into the future? Wouldn't it drive home the point that what they did is deathly serious and can't be tolerated and wouldn't it also signal to the community that we take your lives seriously and are serious about your health and your safety and your well being? Couldn't that have been an outcome of the prosecution of these noose hangers?

Mr. WASHINGTON. First of all, we could not prosecute these noose hangers. At the end of the day, all we could do, if the facts were there, was to bring a juvenile delinquency proceeding which we elected not to do. There has been some talk here—

Mr. ELLISON. So at least you admit that you elected not to do it. What about a juvenile proceeding against them, the noose hanger? Wouldn't that have achieved the goals of signaling to the community that we take their health and safety seriously and wouldn't it have simultaneously signaled to the noose hangers that this is very serious behavior and will not be tolerated in civil society? And, Mr. Washington, I'd like to hear from you.

Mr. CONYERS. I'm going to have to cut my friend off. I know he is the cleanup hitter, but I'm going to have to stop him at this point. Please respond.

Ms. KRIGSTEN. If I may respond for the Department of Justice on this. The idea of juvenile justice is not to send a message. The idea of juvenile justice is rehabilitation. Just as the prosecutor in Jena is being accused of using these views to send a message, the Department of Justice wants to be very careful and is exercising prosecutorial discretion. It does not use that discretion to send a message. Moreover, that message could not have been sent because the result of such a proceeding never would have reached the public.

Reverend SHARPTON. Mr. Chairman, can I say in response to that, that one, the prosecutor in Jena did not use the juvenile system to send a message. The third circuit forced him into the juvenile system. He tried to use the adult system and everything that has happened in the juvenile system seems to be national headlines with Mychal Bell. So it is very, very strange to me that if the Federal Government had elected to go juvenile that they would not have been known to the community that you don't get away with racist imagery like hanging nooses on trees.

I think in a community as small as Jena that message would have gotten around had they elected to enforce the law of hate

crime against juveniles. Or against those that were guilty of what was done on that day.

Mr. CONYERS. I thank the gentleman. I thank Mr. Ellison for bringing us to a conclusion. And I'd like to let everybody know that this hearing has taken place on two dimensions. One is around Jena, but the other is around the state of the criminal justice system in America going back way beyond Jena, going back beyond the 20th century and I feel honored to be the Chairman of the Committee that has had this kind of hearing for the first time since I've been in Congress.

We've had some forums and we've had romp hearings and we have had other things, but this is indeed critical and so to the fact that we have not resolved this case yet is certainly not the point. This matter goes on. Clearly as we all know, this is not the last hearing or inquiry because we are dealing with a historic circumstance that even proceeds the late Dr. Martin Luther King, Jr.

And I want to celebrate the stimulating debate, but the question that will really be the test of time for this hearing on October 16th will be what do we do about it and what solutions ultimately come out of it? And so I believe this Committee owes its thanks to those persons who rallied around the Jena 6 and came in to march and lifted one case that could have been a newspaper item, but lifted it not just nationally, but internationally.

We are now focused on this question of disparate treatment under the law in the United States like, in my view, we have never been before. To that, we owe you thanks. We are also going to solicit your continued cooperation. From my point of view, we need to help the Department of Justice. I mean, this is a crippled agency. We don't even have an attorney general at this moment. We've gone through months and months of hearings as has been alluded to about the nature of the laws both Federal and State. I'm asking for an expedited return of the transcript. We've got a lot of searching and inquiry to do in terms of finding out what the state of the laws are and then how we accelerate the enforcement of the law.

And so I am deeply indebted to the witnesses who have given up their time, of those would have gone to Jena. And I think you can understand the pride that I have for the Committee on the Judiciary. We've had a tremendously insightful commentary. And I want to reach out to those Members of the Judiciary Committee that weren't here today, because that is what it is really all about. I mean, we can hold a meeting or rally, but the question is, what is the Congress going to do? We've got a responsibility just as the Department of Justice does. Just as the community relations service does, just as the U.S. attorneys do.

And so it is in that sense that I again thank you from the bottom of my heart, not only the witnesses here, but many distinguished men and women in the audience, the lawyers that are still active. This matter goes on. It is far from resolved, and perhaps our discussion can cast in a small way a positive light on what will ultimately end up. We are an integral part of this solution and of the resolution of Jena 6. And so we will give all Members 5 legislative days to submit additional questions to the witness and 5 days for the record to be open for the submission of other materials. And I pronounce the Committee concluded for the day.

[Whereupon, at 2:46 p.m., the Committee was adjourned.]



## A P P E N D I X

---

### MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, COMMITTEE ON THE JUDICIARY

Mr. Chairman, thank you for holding this very important hearing. Let me also extend a warm welcome to our distinguished panel of witnesses:

- Mr. Donald Washington, U.S. Attorney, Western District of Louisiana;
- Mr. Richard Cohen, President and CEO, Southern Poverty Law Center;
- Reverend Al Sharpton, President, National Action Network;
- Professor Charles Ogletree, Director, Charles Hamilton Houston Institute for Race and Justice, Harvard Law School;
- Reverend Brian Moran, Pastor, Jena Antioch Baptist Church, President, NAACP Jena Chapter; and
- Ms. Lisa Krigsten, Counsel to the Assistant Attorney General, Civil Rights Division

Mr. Chairman, as every member of this Committee is fully aware, under your leadership this Committee has been one of the most active in the Congress when it comes to oversight. The record speaks for itself. Hearings have been held regarding: U.S. Attorney firings; warrantless surveillance programs; the FBI's use of national security letters; misuse of presidential clemency powers; misuse of presidential signing statements; and protecting the right to vote. Nonetheless, I believe that this is one of the most important oversight hearings that will be held in this Committee during this session of the 110th Congress.

Mr. Chairman, one of the great challenges facing our country today is the fact that incarceration is not an equal opportunity punishment. It is in fact a punishment meted out disproportionately to African American males. As of September 20, 2007, there were an estimated 2,283,818 people in U.S. prisons and jails. The United States incarcerates a greater share of its population, 737 per 100,000 residents, than any other country on the planet. But when you break down the statistics you see that incarceration is not an equal opportunity punishment. Consider the following statistics:

U.S. incarceration rates by race, June 30, 2006:

- **Blacks:** 2,468 per 100,000
- **Latinos:** 1,038 per 100,000
- **Whites:** 409 per 100,000

Gender is an important "filter" on who goes to prison or jail, June 30, 2006:

- **Females:** 134 per 100,000
- **Males:** 1,384 per 100,000

Looking at just the males by race, the incarceration rates become even more frightening, June 30, 2006:

- **Black males:** 4,789 per 100,000
- **Latino males:** 1,862 per 100,000
- **White males:** 736 per 100,000

Looking at males aged 25–29 and by race, you can see what is going on even clearer, June 30, 2006:

- **For White males ages 25–29:** 1,685 per 100,000.
- **For Latino males ages 25–29:** 3,912 per 100,000.

- **For Black males ages 25–29:** 11,695 per 100,000. (That’s 11.7% of Black men in their late 20s.)

Perhaps the most damning statistic of all is that the United States locks up its African American males at a rate 5.8 times higher than did apartheid South Africa, which was the most openly racist country in the world:

- **South Africa under apartheid (1993), Black males:** 851 per 100,000
- **U.S. under George Bush (2006), Black males:** 4,789 per 100,000

The purpose of today’s hearing is to examine the role of the federal government as it pertains to hate crimes, race-related school violence, and disparities within the juvenile criminal justice system. While the high profile, controversial case of the “Jena 6” warrants federal oversight, this hearing is intended to illuminate other inequities on the basis of race within the nation’s school discipline and legal systems.

As you have stated, Mr. Chairman, the case of the Jena 6 is not an isolated incident, but rather a reflection of a larger nationwide phenomenon. Accordingly, this case is an appropriate vehicle for a larger discussion about the unequal application and protection of the law, particularly with respect to African American males, and the appropriate federal response to remedy these inequities.

This hearing will also discuss the federal remedies available for those students and juveniles who have been subjected to discriminatory and biased treatment by school administrators, prosecutors, judges, and law enforcement.

It is important to briefly recount the factual background surrounding the case of Jena 6.

On Thursday, August 31, 2006, a small group of black students asked if they could sit under a tree on the traditionally white side of the Jena High School square. The students were informed by the Vice Principal that they could sit wherever they pleased.

The following day, September 1, 2006, three nooses were found hanging from the tree in question. Two of the nooses were black and one was gold: the Jena High School colors. On Tuesday night, September 5, 2006, a group of black parents convened at the L&A Missionary Baptist Church in Jena to discuss their response to what they considered a hate crime and an act of intimidation.

When black students staged an impromptu protest under the tree on Wednesday, September 6, 2006, a school assembly was hastily convened. Flanked by police officers, District Attorney Reed Walters warned black students that additional unrest would be treated as a criminal matter. According to multiple witnesses, Walters warned the black student protestors that, “I can make your lives disappear with a stroke of my pen.” This was widely interpreted as a reference to the filing of charges carrying a maximum sentence of life in prison.

On Thursday, September 7, police officers patrolled the halls of Jena High School and on Friday, September 8, the school was placed on full lockdown. Most students, black and white, either stayed home, or were picked up by parents shortly after the lockdown was imposed.

*The Jena Times* suggested that black parents were to blame for the unrest at the school because their September 5 gathering had attracted media attention.

Principal Scott Windham recommended to an expulsion hearing committee that the three white boys responsible for hanging the nooses in the tree should be expelled from school. On Thursday September 7, 2006, asserting that the noose were merely a silly prank inspired by a hanging scene in the television mini-series “Lonesome Dove,” the committee opted for a few days of in-school suspension. The names of the three students were not released to the public for reasons of confidentiality.

According to press accounts, on September 10, 2006, several dozen black parents attempted to address a meeting of the school board but were refused an opportunity to speak. At a second September meeting of the school board, September 18, 2006, a representative of the black families was allowed to give a five-minute statement, but school board refused to discuss the “noose issue” because the matter had been fully addressed and resolved.

Although few major disciplinary issues emerged during the fall semester at Jena High School, there is strong evidence that several black male students remained unusually agitated throughout the semester and that disciplinary referrals on these students spiked sharply. On Thursday, November 30, 2006, the academic wing of the Jena High School was largely destroyed by a massive fire. Officials strongly suspect arson.

Throughout the following weekend, Jena was engulfed by a wave of racially tinged violence. In one incident, a black student was assaulted by a white adult as he entered a predominantly white party held at the Fair Barn (a large metal building reserved for social events). After being struck in the face without warning, the

young black student was assaulted by white students wielding beer bottles and was punched and kicked before adults broke up the fight. It has been reported that the white assailant who threw the first punch was subsequently charged with simple battery (a misdemeanor), but there is no documentary evidence that anyone was charged.

In a second major incident, a white high school graduate who had been involved in the assault the night before pulled a pump-action shotgun on three black high school students as they exited the Gotta-Go, a local convenience store. After a brief struggle for possession of the firearm, the black students exited the scene with the weapon.

*The Jena Times* has reported that, in light of these racially-tinged incidents, several high school teachers begged school administrators to postpone the resumption of classes until the wave of hysteria had dissipated. This request was ignored and classes resumed the morning of Monday, December 4, 2006.

Shortly after the lunch hour of Monday, December 4, 2006, a fight between a white student and a black student reportedly ended with the white student being knocked to the floor. Several black students reportedly attacked the white student as he lay unconscious. Because the incident took place in a crowded area and was over in a matter of seconds eye witness accounts vary widely. Written statements from students closest to the scene (in space and time) suggest that the incident was sparked by an angry exchange in the gymnasium moments before in which the black student assaulted at the Fair Barn was taunted for having his “ass whipped.” The victim of the attack is close friends of the boys who have admitted to hanging the nooses in September of 2006.

Within an hour of the fight, six black students were arrested and charged with aggravated battery. According to *The Jena Times*, at least a dozen teachers subsequently threatened a “sick-out” if discipline was not restored to the school. According to the *Alexandria Town Talk*, District Attorney Reed Walters responded to the teacher’s threat by upping the charges on the six boys to attempted second-degree murder and conspiracy to commit second-degree murder—charges carrying a maximum sentence of life in prison.

On the basis of the charges filed by the District Attorney’s office, all six black students have been expelled for the remainder of the school year and, according to *The Jena Times*, several teachers quickly demanded that the accused boys be barred from the school for life.

On December 13, 2006, District Attorney, Reed Walters published a statement in *The Jena Times* in which the young men arrested in the school fight incident were characterized as criminals who had been terrorizing both the school and the community. The sloppy wording of the statement and an introduction associating the tirade with the “recent two incidents at Jena High School” created the impression that those accused of involvement in the fight were also suspected of settling the school fire.

The Louisiana Rules of Professional Conduct 3.6(a) state that:

“A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.”

At a January 29 school board meeting called to consider the possibility of reversing the decision to expel the students, District Attorney Reed Walters, appeared as the school district’s legal counsel. Although it is standard practice in Louisiana for district attorneys to represent the local school board, there is strong evidence that the disciplinary investigation undertaken by the school and the criminal investigation of the December 4 fight are virtually indistinguishable. This heightens the impression that the charges filed by DA Reed Walters reflect the understandable hysteria engulfing both the student body and the school faculty in the wake of the school fire and a weekend of racial violence.

In June of this year, the first of the Jena 6, Mychal D. Bell, was convicted of aggravated second-degree battery and conspiracy by an all-white jury. The “deadly weapon” cited as a predicate for the aggravated charge was a tennis shoe worn by the defendant. The court-appointed attorney who represented Bell called no witnesses and presented no evidence in his defense.

On September 4, 2007, Jena District Court Judge, J.P. Mauffrey granted a motion to overturn Bell’s conspiracy conviction, stating that the case should have been tried in juvenile court. Then on September 14, 2007, Louisiana’s 3rd Circuit Court of Appeals overturned Bell’s remaining aggravated second-degree battery conviction, also on the grounds that the case should have been tried in juvenile court. LaSalle Par-

ish District Attorney Reed Walters did not appeal this decision on September 27, 2007, but rather, has pursued aggravated second-degree battery and conspiracy charges against Bell in juvenile court.

After spending more than nine months in jail, Bell was released on September 27 after bail was set and posted in the pending juvenile case. However, on October 11, 2007, Judge J.P. Mauffrey sentenced Bell to 18 months in a juvenile facility for violating probation on cases unrelated to the Jena 6 matter.

Mr. Chairman, I have called upon the Department of Justice to commence a thorough and comprehensive review and investigation of the circumstances leading to and including the legal proceedings against six young African American high school students known to the world as the Jena 6. Specifically, I have called upon the Department of Justice and its Civil Rights Division to conduct an investigation to determine whether violations of the federal criminal statutes in Title 18 or federal civil rights laws codified in Title 42 of the United States Code have been committed by persons acting under color of law.

The shocking case of the “Jena 6” has focused national and international attention on what appears to be an unbelievable example of the discriminatory and disparate treatment and the separate and unequal justice that was once commonplace in the Deep South. This case suggests that there is more to the controversy in Jena, Louisiana than an effort to turn back the clock on racial justice and equality. It appears to most outside observers that social life in Jena has been frozen in a time period reminiscent of the 1950s. This is simply unacceptable in the year 2007.

That is the message delivered by me and the tens of thousands of persons of goodwill who traveled to Jena on September 20 to bear witness and protest the unequal protection of the law in the case of the Jena 6.

Mr. Chairman, it is inconceivable that in 2007, a young African American high school student could be charged with attempted second degree murder and convicted of aggravated assault for a schoolyard fight. This action seems to me all the more egregious in view of the fact that the fight was provoked by white students, who hung three nooses in a tree at the high school courtyard, to warn black students not to sit there.

After this act of racial intimidation was dismissed as a harmless prank by the school administration, black students protested under the tree. The local District Attorney, Reed Walters, was called in to school to address the students. According to media reports, Mr. Walters warned the black students that he “could take their life away with the stroke of a pen.”

It seems inescapable to me that the failure of the local authority figures refused to take a stand against this act of racism, the noose incident led to a series of fights between white and black students. After one such fight, only black students were arrested and charged—with attempted murder. One of the defendants has already been tried and convicted of aggravated battery.

The prosecution’s theory for seeking a guilty verdict on the charge of aggravated battery is that the defendant used a deadly weapon when he kicked the victim while wearing a pair of sneakers. What makes this decision to charge certain of the defendants with felony offenses and attempt to try them as adults doubly egregious as an abuse of prosecutorial discretion is that no action was taken in a recent and remarkably similar case involving a white defendant and an African American victim.

Let me remind those who regard the hanging of a noose from a tree in Jena, Louisiana as a harmless act at best and a juvenile prank at worst of its frightening and symbolic power, which was captured so poignantly by Billie Holiday in her unforgettable rendition of *Southern Fruit*:

Southern trees bear strange fruit,  
Blood on the leaves and blood at the root,  
Black bodies swinging in the southern breeze,  
Strange fruit hanging from the poplar trees.

Finally, Mr. Chairman, while it is very important for this Committee to focus attention on the case of the Jena 6, it is even more important to evaluate what legislative and other responses by the federal government, if any, should be taken to prevent the recurrence of cases like the Jena 6.

I suggest the Congress ought to consider imposing limitations on the nearly unfettered discretion of prosecutors in determining which offenses to charge defendants with violating. In particular, I believe this Committee should investigate and consider whether there is a need for legislation:

1. encouraging states to establish and use the grand jury system of returning indictments in controversial cases like the Jena 6 by offering or withholding DOJ Program grants;

2. requiring certain states or localities to use grand jury system similar to the way the Voting Rights Acts requires preclearance of election law changes in covered jurisdictions. The idea is that where there is a history of prosecutorial abuse of power or misconduct, controls ought be in place to prevent future abuse;
3. requiring data to be collected and reported relating to allegations of prosecutorial abuse and misconduct and can condition eligibility or receipt of federal funds on a state or localities history;
4. providing that allegations of prosecutorial abuse or misconduct in cases like Jena 6 are immediately reviewable in federal court;
5. directing the Government Accountability Office to conduct a study comparing incidence or likelihood of prosecutorial abuse in jurisdictions using grand jury system versus those using information (D.A. decides) system;
6. making grants to State and local programs designed to combat hate crimes committed by juveniles as does H.R. 254, the David Ray Ritcheson Hate Crimes Prevention Act, which I introduced earlier this year;
7. conditioning receipt of federal funds on state's establishment of procedures to notify public of the right to file grievances against prosecutors who are alleged to have abused power; and
8. conditioning receipt of federal funds on state's enactment of laws placing limits on amount of bail that can be required to secure release of juveniles in non-capital cases; no juvenile in custody of his or her parent should have bail set at a amount that will bankrupt or impose undue burden on parents.

I look forward to discussing these important issues with our distinguished panel of witnesses. Again, thank you Mr. Chairman for holding this hearing. I yield the remainder of my time.

---

PREPARED STATEMENT OF THE HONORABLE STEVE COHEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE, AND MEMBER, COMMITTEE ON THE JUDICIARY

I first learned about the "Jena Six" several months ago and was greatly troubled to by the stories of unequal justice for whites and African Americans in Jena, Louisiana. At the time, I raised my concerns with the Committee, and I am glad to see that this hearing is being held not only to expose what went wrong in Jena, but also to explore the larger issue of racial inequity in the nation's criminal justice system. The series of race-based attacks between white and black high school students that took place in Jena started with the display of nooses by white students who were seeking to exclude their black classmates from socializing under the so-called "white tree." For centuries, the noose has been used to intimidate African Americans through its symbolization of violence against them, yet both federal and state authorities determined that they could not pursue hate crimes prosecutions in Jena based on the display of the nooses. I intend to work with my colleagues to give law enforcement the tools necessary to pursue prosecutions in such instances.

---

PREPARED STATEMENT OF THE HONORABLE BETTY SUTTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO, AND MEMBER, COMMITTEE ON THE JUDICIARY

Thank you, Chairman Conyers, for holding this important hearing on the Jena Six.

When a black student asks whether he can go into an area where only whites usually gather, he is met with nooses that warn him to stay away. This could be a story out of an old history textbook, but it happened here, in the United States, just over a year ago. What happened in Jena, Louisiana is a sharp reminder that although many speak of the civil rights movement as if it happened in the past, in many respects, we still have a long way to go.

The story begins at a Jena High School assembly last year, when a black student asked if he could sit under a tree where the white students usually sat. The principal told him he was free to sit where he wished, but students arriving early at school the following day were greeted with three nooses hanging from that very tree.

Although the students responsible for hanging the nooses were initially expelled from school, this punishment was later deemed too harsh for students who committed what they called an "innocent prank." Fights subsequently broke out among

several members of the student body, and at an assembly convened to address this outbreak of violence, LaSalle Parish District Attorney Reed Walters reportedly warned students that “with a stroke of my pen, I can make your lives disappear.”

A noose is not just a piece of rope; it’s a hateful and violent symbol that represents some of the most reprehensible events that occurred in this country during the last century. To simply dismiss this as an “innocent prank” without an acknowledgement or honest discussion of the emotions it provoked is to disrespect the civil rights movement that fought against everything a noose represents.

Yet the concerns of many in the black community went unheard, and there is every indication that blacks and whites were subject to different standards by the prosecutor. While one member of the group of whites who started a fight with a black student received probation, the black students who started a fight with a white student were at one time charged, as adults, with attempted murder.

Although the events we are discussing today started in Jena, this has turned into a national issue that urgently requires our attention, and I would like to commend the Chairman for his strong leadership in this area. I look forward to hearing from our distinguished panel about the federal government’s role in dealing with hate crimes and race-related violence in our public schools, and about the racial disparities that exist in our juvenile justice system.


---

ARTICLES SUBMITTED BY THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, COMMITTEE ON THE JUDICIARY

**CNN.com.**

 **PRINT THIS**

Powered by  **Clickability**

 **Click to Print**

SAVE THIS | EMAIL THIS | Close

## U.S. attorney: Nooses, beating at Jena High not related

- Story Highlights
- Nooses, beating are separate, unrelated incidents, U.S. attorney says
- Jena 6 are a group of teens charged with beating up a white classmate
- Thousands expected to protest charges in Jena on Thursday
- Nooses hung outside school in August 2006; student attacked three months later

**JENA, Louisiana (CNN)** -- There is no link between the nooses hung by white students outside a Louisiana high school and the alleged beating of a white student by black teens, according to the U.S. attorney who reviewed investigations into the incidents.

The events, though likely symptoms of racial tension, were separate incidents, said Donald Washington, U.S. attorney for the Western District of Louisiana.

The events occurred three months apart last year in Jena, Louisiana.

"A lot of things happened between the noose hanging and the fight occurring, and we have arrived at the conclusion that the fight itself had no connection," he said.

Thousands of protesters are descending on the town of 3,000 to demonstrate Thursday against the way the cases have been handled.

Many said they are angry the six black students, dubbed the "Jena 6," are being treated more harshly than the white students who hung the nooses. The white students were suspended from school but did not face criminal charges. The protesters argue they should have been charged with a hate crime. The black students face charges of aggravated second-degree battery and conspiracy in the schoolyard beating.

Civil rights activist Al Sharpton, speaking to the media in Jena, said there is no intention to stir up violence.

"We didn't come to start trouble; we came to stop trouble," he said Wednesday.

"We're going to walk past the scene of the crime, where this tree was. ... This is a march for justice. This is not a march against whites or against Jena."


While critics contend the nooses and the beating are two sides of the same problem, U.S. Attorney Washington said a direct link would be hard to prove.

There was "no connection that a prosecutor could take into court and say, 'You know, judge or jury, we're prosecuting these white kids for these nooses, and look at all the damage they caused downstream, all the way down to the fight at Jena High School on December 4,'" he told CNN's Kyrle Phillips on Tuesday.

"We could not prove that, because the statements of the students themselves do not make any mention of nooses, of trees, of the 'N' word or any other word of racial hate."

LaSalle Parish District Attorney Reed Walters, who oversaw the local investigations into both incidents, rejected the idea there was "a direct linkage" between the hanging of the nooses and the schoolyard attack.

"When this case was brought to me and during our investigation and during the trial, there was no such linkage ever suggested," Walters said in a news conference Wednesday in Jena. "This compact story line has only been suggested after the fact."

 Watch Walters explain why he thinks the case is not about race >

Washington noted that after the noose-hanging incident at the start of the school year in August, school routines went forward as usual; there was no apparent lingering anger.

"There were three months of high school football in which they all played football together and got along fine, in which there was a homecoming court, in which there was the drill team, in which there were parades," Washington added.

Asked if the incidents had been blown out of proportion, he replied, "To a degree, I believe so, yes."

The noose hanging occurred after a black student asked whether he and some friends could sit under the tree, a place normally used by whites.

Washington said FBI agents who went to Jena in September to investigate the noose report, and other federal officials who examined what happened, concluded it "had all the markings of a hate crime."

The incident wasn't prosecuted as such because it didn't meet the federal standards required for the teens to be certified as adults, Washington said. A court makes the final decision on whether to drop their juvenile status.

The three white teens were under 18, with no prior records, and no group such as a Ku Klux Klan was found to be behind their actions.

It was left up to the school to discipline the students, who were briefly suspended from classes, despite the principal's recommendation that they be expelled, Walter said.

Washington said federal officials examined the way the school handled the infractions, and whether black students were being treated differently than whites. The officials found it was not unusual for the school superintendent to reinstate students after the principal recommends expelling them.

Washington said he thinks most people were disappointed the three students didn't get more severe punishment.

Racial tension in the town increased after the noose incident. In November, someone burned the main academic building. The arson has not been solved, but many believe the incident is linked to racial tension.

Then, in December, the Jena 6 were accused of brutally beating a white student, Justin Barker.

The beating is considered a state, not a federal, crime, and all six defendants pleaded not guilty.

Parents of the Jena 6 say they heard Barker was hurling racial epithets, but Barker's parents insist he did nothing to provoke the attack.

On Friday, the 3rd District Court of Appeals in Lake Charles threw out the conviction for aggravated second-degree battery against defendant Mychal Bell, saying the charges should have been brought in juvenile court.

Earlier this month, a district court judge vacated a conviction for conspiracy to commit aggravated second-degree battery, saying the charge should have been brought in juvenile court.

Washington said Bell had several previous assault charges on his record.

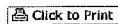
He and the other five members of the Jena 6 -- all of them African-Americans -- were initially charged with attempted murder and conspiracy to commit murder in connection with the December 4 beating.

Charges against Bell were reduced, as were charges against Carvin Jones and Theodore Shaw, who have not yet come to trial. Robert Bailey, Bryant Purvis and an unidentified juvenile remain charged with attempted murder and conspiracy to commit murder.

**All About Louisiana**

**Find this article at:**

<http://www.cnn.com/2007/US/law/09/19/jena.six.link/?ref=mpstoryview>



SAVE THIS | EMAIL THIS | Close

☐ Check the box to include the list of links referenced in the article.

© 2007 Cable News Network.



Web: MSNBC Search Make MSNBC Your Homepage | MSN Home | Hotmail | Sign In **msn**

Home » U.S. News » Race & Ethnicity

**Video**  
**U.S. News**  
 Crime & Punishment  
 U.S. Life  
 U.S. Security  
 Education  
 Environment  
 Race & Ethnicity  
 Charity News  
 Only on MSNBC.com  
 Peculiar Postings  
**Politics**  
**World News**  
**Business**  
**Sports**  
**Entertainment**  
**Health**  
**Tech / Science**  
**Travel**  
**Weather**  
**Blogs Etc.**  
**Local News**  
**Multimedia**  
**Most Popular**  
**NBC NEWS**  
**Today Show**  
**Nightly News**  
**Dateline NBC**  
**Meet the Press**  
**MSNBC TV**  
**MSNBC Classified**  
**Shopping**  
**Start a Business**  
 from Entrepreneur.com  
**Dating**  
 with PerfectMatch.com  
**Real Estate**  
 with HomePages.com  
**Investments**  
 57 more stock buys  
**Home Equity**  
 with Wells Fargo

## Noose incidents evoke segregation-era fears

### Symbol of racial terror reappears in Jena, La., across nation

A noose hangs outside a Columbia University professor's office on Thursday in New York. The NYPD's hate crime unit was examining whether the twin noose was the work of students or colleagues at odds with professor Madonna Constantine, who is black.

[View related photos](#)

**AP Associated Press**  
 Updated: 7:39 p.m. ET Oct 10, 2007

**ATLANTA** - In the months since nooses dangling from a schoolyard tree raised racial tensions in Jena, La., the frightening symbol of segregation-era lynchings has been turning up around the country.

Nooses were left in a black Coast Guard cadet's bag, at a Long Island police station locker room, on a Maryland college campus, and, just this week, on the office door of a black professor at Columbia University in New York.

The noose — like the burning cross — is a generations-old means of instilling racial fear. But some experts suspect the Jena furor reintroduced some bigots to the rope. They say the recent incidents might also reflect white resentment over the protests in Louisiana.

[Story continues below ↓](#)

advertisement

#### The Big Picture

Decide for yourself where the struggle still stands  
 (broadband only)

#### Photo features

Redux Pictures

Reuters

[More](#)

#### Week in Pictures

Record-setting pumpkins, massive waves, life in the dumps and more.

#### PhotoBlog

View and discuss the pictures and issues that caught our eyes

Advertisement

**MSN SHOPPING**



**Plus-size styles**

- Dresses & skirts
- Pants & jeans
- Shirts & tops
- Career wear

Search

#### RESOURCE GUIDE

Gating • Get two months free!  
Find your dream home today!  
Find a business to start  
Fast \$7 trades, no limit  
Get Your Degree Online  
Home Equity  
Wells Fargo Shopping  
Find Your Next Car

#### Sponsors:



DELTA SKYMILES

4,658 MILES

CHANGE IS: MILES FOR EATING, SLEEPING, SHOPPING AND YES, EVEN FLYING

LEARN NOW

"It certainly looks like it's been a rash of these incidents, and presumably, most of them are in response to the events in Jena," said Mark Potok of the Southern Poverty Law Center, which tracks white supremacists and other hate groups. "I would say that as a more general matter, it seems fairly clear that noose incidents have been on the rise for some years."

#### Symbol of terror reappears

Thousands of demonstrators, including the Revs. Jesse Jackson and **Al Sharpton**, converged on Jena on Sept. 20 to decry what they called a racist double standard in the justice system. They protested the way six blacks were arrested on attempted murder charges in the beating of a white student, while three whites were suspended but not prosecuted for hanging nooses in a tree in August 2006.

The noose evokes the lynchings of the Jim Crow South and "is a symbol that can be deployed with no ambiguity. People understand exactly what it means," said William Jelani Cobb, a professor of black American history at Spelman College in Atlanta.

He said the Jena incident demonstrated to some racists how offensive the sight of a noose can be: "What Jena did was reintroduce that symbol into the discussion."

Though the terror of the civil rights era is gone, the association between nooses and violence — even death — remains, Potok said.

"The noose is replacing the burning cross in the mind of much of the public as the leading symbol of the Klan," Potok said.

Potok dismissed the idea that the placing of a noose could be interpreted as a joke, even among people born after the end of segregation.

"I think that it's true that most of these kids don't know much about civil rights history," he said. "But every single one of them understands what a noose means at the end of the day."

#### Sightings beyond Jena

#### Related Stories

| What's this?

**Coast Guard increases training after noose incidents**  
Coast Guard commandant speaks about noose incidents  
**NBC15 in-Depth Coverage: Journey to Jena**  
**Local Rally Held To Show Support For Jena 6**  
**Protesters Gather For Jena 6**

#### Most Popular

Most Viewed Top Rated Most E-mailed

**Suspect arrested in sex assault on 3-year-old**  
**Life is harder now, some experts say**  
**Man to die for leaving girl to be eaten by gators**  
**Spears turns herself in to L.A. police**  
**Gingery, Romney seeks lies to Christian right**  
**Most viewed on MSNBC.com**

#### RSS feeds on MSNBC.com

Add these headlines to your news reader:

Race & Ethnicity **More**  
Learn more about RSS

As word of the Jena case began circulating, reports of similar incidents arose.

In July, a noose was left in the bag of a black Coast Guard cadet aboard a cutter. A noose was found in August on the office floor of a white officer who had been conducting race-relations training in response to the incident.

In early September, a noose was discovered at the [University of Maryland](#) in a tree near a building that houses several black campus groups.

On Sept. 29, a noose appeared in the locker room of the Hempstead, N.Y., police department, which recently touted its efforts to recruit minorities.

On Oct. 2, a noose was seen hanging on a utility pole at the Anniston Army Depot in Alabama.

**CLICK FOR RELATED CONTENT**

**Noose found on Columbia professor's door  
Jena mayor calls Mellenkamp song inflammatory**

Last week, the president of historically black Grambling State University in Louisiana announced he would seek sanctions against five teachers who participated in a lesson on race relations that included placing a noose around the neck of a child at a mostly black on-campus elementary school.

**MSNBC video**



**Launch**

Lynching lesson  
Oct. 2: Officials at  
Grambling State  
University launch  
an investigation after  
photos surface of a  
young girl with a  
noose around her  
neck. NBC's Martin  
Savidge reports.

WSOC

The Columbia incident involved a black professor of psychology and education, Madonna Constantine, who teaches a class on racial justice.

The Columbia investigation also follows the arrest on Sunday of a white woman on hate-crime charges alleging she hung a noose over a tree limb and threatened a black family living next door in [New York City](#). The two incidents were "the first noose cases in recent memory" in the city, said Deputy Inspector Michael Osgood, commander of the police Hate Crime Task Force.

Not that the use of nooses for racial intimidation is a new phenomenon.

In 2002, white employees at a Texas industrial company put a noose around a black co-worker's neck. Charles Hickman sued

and was awarded more than \$1 million last year.


Potok said the recent noose incidents could represent white backlash over the demonstrations in Jena.




"We're seeing a lot of generalized white resentment," he said. "The conversation among many white people, particularly in the South, amounts to the idea that Jena was a black-on-white hate crime that is being widely misconstrued as a case of racial oppression of blacks."

## MORE FROM MSNBC.COM

**Gut Check America: Life is harder now, some say**  
**Romney seeks ties to Christian right**  
**The Matrix: How do you feel about '08 hopefuls?**  
**First 'baby boomer' files for Social Security**  
**World Blog: No peace, even in kids' playground**

© 2007 The Associated Press. All rights reserved. This material may not be published, broadcast, rewritten or redistributed.

Rate this story Low  High  
 Current rating: 3.5 by 94 users • [View Top Rated stories](#)

 Print this  Email this  IM this

## MORE FROM RACE &amp; ETHNICITY

[Next →](#) [Race & Ethnicity Section Front](#)

For many blacks, Clinton or Obama?  
 AIM leader Bellecourt dead at 75  
 Not entirely positive response to Cosby's book  
 'Jena 6' teen back in jail  
 Columbia hands over noose tape  
 Some say it's way too soon for Imus comeback  
[Race & Ethnicity Section Front](#)

Add Race & Ethnicity headlines to your news reader:

      
 More RSS feeds from MSNBC.com

## Top MSNBC stories

Romney seeks ties to Christian right  
 Rockies KO Arizona, head to Series  
 Suspect arrested in rape of tot  
 Life is harder now, experts say  
 Crude oil surges to new record

## NBC News highlights

Trump: Rosie 'follows me like the plague'  
 Sen. Craig vows to clear name  
 Make your man better in bed  
 Judge speaks out after husband, mom murdered  
 Bill Cosby on 'Meet the Press'

## SPONSORED LINKS

[Get listed here](#)

**Lose 20 Pounds In 3 Weeks**  
 Amazing Chinese weight loss secret. As seen on Oprah and 60 Minutes.  
[www.mvsource.com](http://www.mvsource.com)

**Sciatic Nerve Pain Relief**  
 New Breakthrough! Remedy That The Stars Use. Is Now Surgical and Safe.  
[ResilientSciaticNerve.com](http://ResilientSciaticNerve.com)

**Avoid The Nursing Home**  
 Learn how to banish the aches, pains, and illness that come with aging  
[Boardroom.com](http://Boardroom.com)

---

[Cover](#) | [U.S. News](#) | [Politics](#) | [World News](#) | [Business](#) | [Sports](#) | [Tech/Science](#) | [Entertainment](#) | [Travel](#) | [Health](#) | [Blogs Etc.](#) | [Weather](#) | [Local News](#)  
[Newsweek](#) | [Today Show](#) | [Nightly News](#) | [Dateline NBC](#) | [Meet the Press](#) | [MSNBC TV](#)

[About](#) | [Alerts](#) | [Newsletters](#) | [RSS](#) | [Mobile](#) | [Podcasts](#) | [Site Map](#) | [Help](#) | [News Tools](#) | [Jobs](#) | [Contact Us](#) | [Terms & Conditions](#) | [Privacy](#)  
© 2007 MSNBC.com

© 2007 Microsoft [MSN](#) [Privacy](#) [Legal](#) [Advertise](#)

[Feedback](#) | [Help](#)

MATERIAL SUBMITTED BY CHARLES J. OGLETREE, JR., DIRECTOR, THE CHARLES  
HAMILTON HOUSTON INSTITUTE FOR RACE AND JUSTICE, HARVARD LAW SCHOOL

*LAW OFFICE OF*  
**LOUIS GRANDERSON SCOTT**  
*ATTORNEY AT LAW*  
*510 PINE STREET*  
*MONROE, LOUISIANA 71201*

*Telephone*  
*(318) 323-6107*

*Fax*  
*(318) 387-9576*

---

October 15, 2007

**RE: JENA 6**

Dear Mr. Chairman and Committee Members:

Below I have outlined what I believed to be the major problems which brought about unjust results relating to the Jena 6:

- 1.) The school board did not properly enforce the civil rights of the African -American students who wanted to sit or stand under the tree at Jena High School.
- 2.) The District Attorney threaten the students who's rights had been violated rather than the students who violated the rights.
- 3.) The District Attorney failed to prosecute the other white males involved in beating up Robert Bailey. The one white male who was prosecuted was only charged with simple battery even though it is alleged that a bottle was used in the attack.
- 4.) The District Attorney failed to bring juvenile charges against the noose hangers. I do not think that the kids should have been charged federally with a hate crime.
- 5.) The School Board failed to address the legitimate safety concerns of the African American parents who attended the school board meeting regarding the hanging of the nooses in the tree.
- 6.) The District Attorney charged the African-American children in the Gotta Go incident, but failed to charge the white man in the incident even though the white man attempted to either kill, batter or assault the black children at the store. The white man at the store had a pump shotgun.
- 7.) The District Attorney charged the black teenagers in the December 4, 2006 incident with attempted murder which was far outside of what was justified by the facts.
- 8.) The District Attorney engaged in an illegal maneuver by charging Mychal Bell as an adult with attempted second degree murder in order to remove the case from juvenile jurisdiction, then leaving it in adult court after the charge was reduced to a charge which could

not be tried in adult court.

9.) All local arms of law enforcement (Jena Police Department, La Salle Parish Sheriff's Department and the La Salle Parish District Attorney's Office) failed and refused to give the attorneys for Mychal Bell a copy of the police reports generated in this case. It appears that the police report has been destroyed.

10) The District Attorney failed to charge any of the white students involved in the December 4, 2006 incident with any crime even though a number of witnesses gave statements that white students started the fight by taunting Robert Bailey about getting his "ass kicked" and by making other inciting and aggressive actions. The District Attorney failed to charge the white student who admitted that he landed on top of two of the Jena Six students.

11.) The Judge allowed the District Attorney to proceed to trial against, the juvenile, Mychal Bell in adult court even though he was aware of the law as a result being a juvenile judge and as a result of being president of the state organization of juvenile judges.

12.) The problems of the illegal first trial are outlined in the Motions For New Trials.

13.) Mychal Bell, while he was awaiting adult trial was brought before the court on juvenile charges, that he had never been arrested on and tired without knowing exactly what the charges were about and without any of his witnesses being subpoenaed to be present.

14.) The improper juvenile convictions were used to justify other actions taken against Mychal Bell.

15.) The United States Attorney came on a nationally broadcasted news show and gave the green light to racist to proceed to hang nooses. Since the program there has been a rash of noose hangings.

16.) Mychal Bell has been required to go before the same judge on juvenile matters who illegally tried him on adult matters.

17.) The judge allowed public exposure of the juvenile matters even though a hearing had been conducted outside of the presence of the public.

18.) At each hearing the judge argues the state's case and has the state's evidence ready for presentation.

19.) Mychal Bell has to suffer while defense counsel goes through the necessary legal steps from district court through the courts or appeal.

20.) Other problems cannot be discussed because they relate directly to matters discussed in juvenile court.

SUMMARY

The local school board officials did not take sufficient steps to protect the rights of the African American children who wanted to sit or stand under the tree. The state and the federal government also did nothing.

Instead of defending the rights of the African American students the state threaten the students by letting them know that there lives could be destroyed with the "stroke of a pen".


Whites who attacked blacks were treated differently from blacks who were alleged to have attacked whites.

We believe that the adult trial and three of the juvenile trials were illegal.

The law although it provide remedies, does not provide a timely remedy which can prevent harm to the young Mychal Bell. There should be stronger laws to protect against wrongful prosecution, and prosecution which discriminates against African- Americans.

If you should have any questions or concerns, please contact my office at the number or the address listed above.

Sincerely,



Louis G. Scott  
Attorney at Law



STATE OF LOUISIANA \* PARISH OF LA SALLE \*TWENTY- EIGHTH JUDICIAL  
DISTRICT COURT

STATE OF LOUISIANA FILED: \_\_\_\_\_

VS. NO: 82112

MYCHAL D. BELL BY: \_\_\_\_\_  
DEPUTY CLERK

\*\*\*\*\*

MOTION TO CONTINUE

\*\*\*\*\*

NOW INTO COURT, through undersigned counsel, comes Mychal Bell, who moves for a continuance as follows:

1.

Counsel has recently been retained to represent mover in this matter.

2.

Mover is set to be sentenced on July 31, 2007 in Jena, Louisiana.

3.

Mover has heretofore been represented by Hon. Blaine Williams of the Indigent Defender Board. Prior counsel has represented mover from institution of prosecution through trial.

4.

In order to properly represent mover at sentencing counsel is in need of additional time in order to:

i. Obtain records, data, and information relating to sentencing. This includes school records, medical records, jail records, sports records, work records (if any) church records (if any) and etc.

5.

In order to properly represent mover in a possible motion for a new trial and/or motion for a post verdict judgment of acquittal, counsel is in need of:

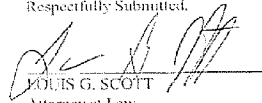
- A. Relevant court minutes;
- B. A transcript of the trial;
- C. Interviews with those who attended the trial;
- D. A review of all motions filed;
- E. A review of all of the medical evidence submitted;
- F. A review of all the physical evidence presented;
- G. Additional interviews with mover;
- H. Interviews to determine why black jurors did not show up for the trial;
- I. Interviews to determine if the case was properly transferred from juvenile court;
- J. Other actions which should be taken to prepare for sentencing and;
- K. Meetings with prior counsel and co-counsel;

6.

There are many legal and fact issues which must be investigated and researched before the sentencing date.

**WHEREFORE, MOVER REQUEST** that the sentencing date presently set for July 31, 2007 be reset to another date.

Respectfully Submitted,

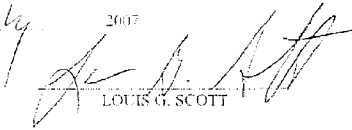


LOUIS G. SCOTT  
Attorney at Law  
LA Bar Roll #11882  
510 Pine Street  
Post Office Box 3305  
Monroe, Louisiana 71210-3305  
(318) 323-6107 - Telephone  
(318) 387-9576 - Fax

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been sent by United States Mail, postage prepaid, to J. Reed Walters, District Attorney, P. O. Box 1940, Jena, Louisiana 71342 on this

12<sup>th</sup> day of July, 2007.



LOUIS G. SCOTT

STATE OF LOUISIANA	28TH JUDICIAL DISTRICT COURT
vs.	PARISH OF LASALLE
MYCHAL BELL	STATE OF LOUISIANA

MOTION FOR POST VERDICT JUDGMENT OF ACQUITTAL

NOW INTO COURT comes defendant, by and through counsel of record in this cause, pursuant to Article 821 of the Louisiana Code of Criminal Procedure, and for his Motion for Post Verdict Judgment of Acquittal says:

I.

The evidence contained in the record is insufficient as a matter of law to support the verdict of the jury finding the defendant guilty of the offense of Aggravated Second Degree Battery and Conspiracy to commit Aggravated Second Degree Battery.

1.

The evidence presented by the State, viewed in its best light, showed that the defendant punched the victim, Justin Barker causing him to fall to the ground. The evidence also shows that several other persons kicked the victim after he was down. There was no expert medical testimony as to when the victim became unconscious, however at some point, during the incident, the victim lost consciousness.

2.

The evidence presented by the State, viewed in its best light did not show serious bodily injury. There was no expert medical testimony as to the extent of the victims injuries. Several lay witnesses testified that the victim was unconscious. There was also testimony that the victim was released from the hospital and attended a ring ceremony later that night.

the presence of some of the other accused defendants before the incident but showed no plan, combination, criminal conspiracy nor any other action so as to become a principal to any acts committed by others during the incident.

4.

The evidence presented by the State, testimony viewed in its best light, showed that the victim had multiple abrasions, bleeding and swelling on the head and a period of unconsciousness. There was testimony by the victim that he suffered memory losses and headaches that he had not had before the incident. There was testimony by an emergency room nurse that the patient had a history of migraine headaches. There was no clear testimony as to the duration of the unconsciousness or when it began.

5.

The evidence presented by the State, testimony viewed in its best light, showed that the defendant struck the victim with his bare hand. While multiple witnesses to the incident testified that after the punch, the victim was then beset upon by others, only one witness testified that the defendant kicked the victim. All of the other witnesses testified that they did not see the defendant kick the victim.

6.

The evidence presented by the State, testimony viewed in its best light, showed that other defendants in the incident kicked the victim but did not use any weapons. The State would rely on testimony that the other defendants wore tennis shoes while kicking the victim. While a tennis shoe may be used as a dangerous weapon see *State vs. Munoz*, 575 So. 2d 848, in the present case, the tennis shoes worn by the other defendants were not used in a manner likely to result in death or grave bodily injury.

7.

There is no evidence contained in the record that the defendant was involved in either a conspiracy or that the defendant aided or abetted the crime. Therefore, no rational trier of fact could find the defendant guilty of the offense of Aggravated Second Degree Battery and Conspiracy to commit Aggravated Second Degree Battery beyond a reasonable doubt and to a moral certainty as required by

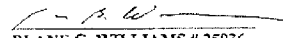
II.

There is no evidence in the record which proves that the defendant participated in nor had knowledge of any conspiracy to commit Aggravated Second Degree Battery and Conspiracy to commit Aggravated Second Degree Battery beyond a reasonable doubt and to a moral certainty as required by law.

III.

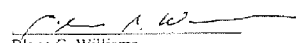
WHEREFORE, the defendant moves the Court to set aside the verdict of the jury and grant his Motion for Post Verdict Judgment of Acquittal on all charges or in the alternative find the defendant not guilty of Conspiracy to commit Aggravated Second Degree Battery and guilty of the lesser and included offense of Simple Battery.

by:

  
BLANE G. WILLIAMS # 25036  
706 LEE ST.  
ALEXANDRIA, LA 71301

CERTIFICATE

I hereby certify that a copy of the above Motion has been served on the LaSalle Parish District Attorney's Office by placing in the U. S. Mail postage prepaid on this the 10th day of JULY, 2007.

  
Blane G. Williams  
Attorney for Defendant

LAW OFFICE OF  
**LOUIS GRANDERSON SCOTT**  
ATTORNEY AT LAW  
510 PINE STREET  
MONROE, LOUISIANA 71201

Telephone  
(318) 337-6177

Fax  
(318) 337-9576

August 2, 2007

J. P. Maubray, Jr.  
District Court Judge  
P. O. Drawer 1890  
Ipsa, Louisiana 71342

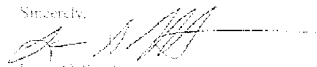
RE: STATE OF LOUISIANA VS. NO: 82112; MYCHAL D. BELL

Dear Judge Maubray, Jr.:

I am adopting the Motion For Post Verdict of Acquittal filed by prior counsel. Please let me know if that motion is also set for September 4, 2007.

If you should have any questions or concerns, please contact my office at the number shown above.

Sincerely,

  
Louis G. Scott  
Attorney at Law

STATE OF LOUISIANA \* PARISH OF LA SALLE \* TWENTY- EIGHTH JUDICIAL  
DISTRICT COURT

STATE OF LOUISIANA FILED: \_\_\_\_\_

VS. NO. 82412

MYCHAL D. BELL BY: \_\_\_\_\_  
DEPUTY CLERK

\*\*\*\*\*  
SECOND MOTION IN ARREST OF JUDGEMENT  
\*\*\*\*\*

NOW INTO COURT, through undersigned counsel, comes Mychal Bell, who moves for  
an Arrest of Judgment on the following grounds:

1.

The indictment is substantially defective in that some essential averments are missing.

2.

Article 473 of The Louisiana Code of Criminal Procedure provides that: "When the name  
of the person named is substantial and not merely descriptive, such as when the injury is to the  
person, as in murder, rape, or battery, the indictment shall state the true name of the victim or the  
name, appellation, or nickname by which he is known."

3.

The Amended Bill of Information nor the original Bill of Information stated who the  
battery was committed upon. The Bill alleges a battery upon another person on or about  
December 4, 2006. The defendant had been in the presence of many people on or about  
December 4, 2006.



4.

Article 464 of the Louisiana Code of Criminal Procedure provides that an indictment or information shall be a plain, concise and definite written statement of the essential facts. The Bill of Information in this case did not inform the defendant who the victim was, what dangerous weapon was used, or the nature of the alleged serious injury.

5.

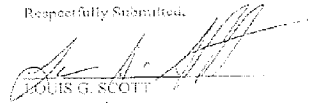
The notice given by the Bill of Information was not sufficient because it was not possible for the defendant prepare a defense. A reading of the information does not reveal what the state is alleging is a dangerous weapon. A reading of the information does not reveal what injuries are alleged to be serious.

6.

Nothing contained in the record reveals what the dangerous weapon is supposed to be. Was it a fist, the floor, a stick, a shin, a belt, a ring, a gun, a pen, a fingernail, a knife, a watch, a shoe or something else. The possibilities were almost endless. The defendant was therefore blindsided by the allegation that a shoe was as dangerous weapon. The defendant did not know what he was defending against.

**WHEREFORE, DEFENDANT PRAYS** that his Second Motion in Arrest of Judgment be granted.

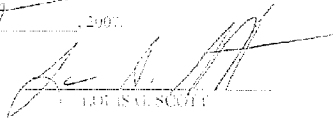
Respectfully Submitted,



LOUIS G. SCOTT  
Attorney at Law  
1 A Bar Roll #11882  
510 Pine Street  
Post Office Box 3305  
Monroe, Louisiana 71219-3305  
(318) 327-6197 - Telephone  
(318) 387-9576 - Fax

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been sent by United States Mail postage prepaid, to J. Reed Walters, District Attorney, P. O. Box 1940, Jena, Louisiana 71342 on this 2<sup>nd</sup> day of August, 2001.



LOUIS G. SCOTT

STATE OF LOUISIANA - PARISH OF LA SALLE - TWENTY- EIGHTH JUDICIAL  
DISTRICT COURT

STATE OF LOUISIANA FILED: \_\_\_\_\_

VS. NO. 82112

MYCHAL D. BELL BY: \_\_\_\_\_  
DEPUTY CLERK

ORDER

Considering the foregoing Second Motion In Arrest of Judgment:

IT IS ORDERED that The Second Motion In Arrest of Judgment be set for hearing on the  
1<sup>st</sup> day of September, 2007 at 1:00 p.m. in the courtroom of the La Salle Parish Courthouse.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 2007 in \_\_\_\_\_,  
Louisiana

\_\_\_\_\_  
JUDGE

STATE OF LOUISIANA\*PARISH OF LA SALLE\*TWENTY-EIGHT JUDICIAL  
DISTRICT COURT

STATE OF LOUISIANA

FILED: \_\_\_\_\_

VS. NO.: 82112

MYCHAL D. BELL

BY: \_\_\_\_\_  
DEPUTY CLERK

\*\*\*\*\*  
MOTION FOR NEW TRIAL  
\*\*\*\*\*

NOW INTO COURT, through undersigned counsels, come Mychal Bell to request a new trial as follows:

1.

The ends of justice would be served the granting of new trial, for the following reasons:

- a) The matter was tried in an atmosphere where a fair and impartial jury could not be impaneled. The venue should have been changed. There was not a single person in La Salle Parish who was not affected by events relating to the charge. The events effected the churches, the schools, the hospitals, the police department, the businesses, the sheriff's office, the firefighters and every citizen.
- b) No African Americans were seated on the jury, and none were called to be questioned.
- c) The method used for the selection of the venire was not fair, because insufficient effort was made to obtain attendance of potential jurors who did not appear.
- d) The jury included friends of the district attorney and relatives of witnesses for the state.
- e) Based upon information obtained it appears that prejudicial remarks were made in violation of article 770 of the Code of Criminal Procedure.
- f) Considering the size of the parish and the closeness of the community, it was impossible for the jury to escape outside influences upon its deliberations without being sequestered.
- g) The case was tried by a prosecutor who should have recused himself because of personal interest in the outcome, and his service as attorney for the school board.

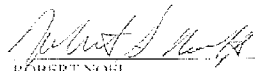
- h.) The trial was conducted in an atmosphere not conducive to a fair trial.


2.

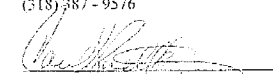
The defendant was denied a fair trial pursuant to *Washington v. Strickland*, in that defense counsel were ineffective and failed to provide adequate representation as follows:

- a.) Failure to Move for change of Venue. Mychal Bell would assert that this matter is unusual in its notoriety and that it was at the time of trial and it is now impossible to impanel an impartial jury. The nature of the allegations of racial assaults and intimidation at Jena High School and the highly charged atmosphere should have resulted in a change of venue in this matter had trial counsel so moved;
- b.) Failure assert objections to the racial composition to the jury venire. Mychal Bell asserts that the venire was bereft of African Americans or other minorities and that the lack of availability of African American potential jurors and the resultant all white jury denied him a trial in a case that centered on racial acrimony;
- c.) Failure to assert objections to the Court's failure to impel the appearance for jury duty of potential African American jurors. Trial Counsel's failure to demand that the Court attach African American jurors who failed to appear to secure their availability for jury duty contributed to an all white jury and a denial of his right to a fair trial;
- d.) Failure to issue a Batson objection or an objection pursuant to *California v. Johnson* resulted in an all white jury and the exclusion of African American jurors;
- e.) Failure to object to the lack of jurisdiction of the District Court over matters involving a juvenile charged with an offense not enumerated in Children's Code Article 305;
- f.) Failing to call witnesses at trial for the defense or to properly investigate the case;
- g.) Failure to prepare for trial and;
- h.) Failure to file a motion to seek recusal of the District Attorney despite knowledge of facts that should have lead him to request recusal.

WHEREFORE DEFENDANT REQUEST, that a New Trial be granted.

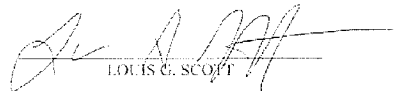
  
 ROBERT NOEL  
 CO-COUNSEL  
 Attorney at Law  
 3101 Ammand, Suite 5  
 Monroe, Louisiana 71201  
 (318) 388 - 1700

  
 LOUIS G. SCOTT, LEAD COUSEL  
 Attorney at Law  
 510 Pine Street  
 Monroe, Louisiana 71201  
 (318) 323 - 6107  
 (318) 387 - 9576

  
 CAROL POWELL-FLEXING  
 CO-COUNSEL  
 Attorney at Law  
 141 Desiard Street  
 Monroe, Louisiana 71201  
 (318) 324 - 0700

CERTIFICATE

This is to certify that a true and correct copy of the foregoing Motion has been sent by United States Mail, postage prepaid, to J. Reed Walters, District Attorney, P. O. Box 1940 Jena, LA 71342, on this 10<sup>th</sup> day of August 2007.

  
 LOUIS G. SCOTT

STATE OF LOUISIANA \* PARISH OF LASALLE  
 TWENTY-EIGHTH DISTRICT COURT  
 STATE OF LOUISIANA  
 vs. NO. 82112  
 MYCHAL D. BELL

SECRET NO. 82112  
 FILED: DECEMBER 27 2 3 51  
Rick McQueen  
 DEPUTY CLERK

## MOTION IN ARREST OF JUDGMENT

The defendant, Mychal Bell, through counsel, moves the Court to arrest the judgment in his case pursuant to Louisiana Code of Criminal Procedure, Article 859, and states the following in justification:

The court is without jurisdiction of the case; specifically, Mychal Bell was charged with the offenses of Aggravated Second Degree Battery and Conspiracy to Commit Aggravated Second Degree Battery. Mychal Bell was 16 years old at the time of the offense, thus the Juvenile Court should have retained jurisdiction, since Louisiana Children's Code Article allows a juvenile to be charged as an adult for enumerated offenses only of which neither offense charged and tried in this matter was included. The jurisdiction in this matter is not discretionary and the matter once converted prior to trial should have been dismissed in District Court.

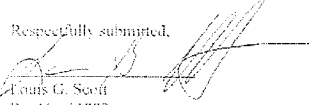
Conviction for this offense in District Court could only occur upon a plea of guilty to a lesser included offense to an enumerated crime or a jury finding him guilty at trial on a lesser included offense to an enumerated crime. State ex rel. Davis v. Criminal Dist. Court, 268 So. 2d 1092, 1092-1094 (La. 1979) is on point.

In Davis, the law at the time of that case provided for the prosecution of juveniles as adults only for capital cases. Davis was initially indicted for First Degree Murder and prior to trial the District Attorney amended the charge to Second Degree Murder. The Supreme Court vacated the conviction and ordered a remand to Juvenile Court.

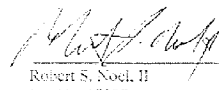
Mychal Bell would assert that although the law has changed in the inclusion of additional

Movers pray that this Court arrest judgment in this matter and remove this matter to a juvenile court having jurisdiction over this matter.

Respectfully submitted,



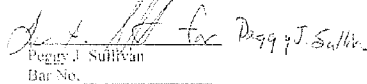
Louis G. Scott  
Bar No. 11682  
Attorney for Defendant  
510 Pine St  
Monroe, Louisiana 71201  
(518) 327-6107



Robert S. Noel, II  
Bar No. 17357  
Attorney for Defendant  
2101 Armand, Suite 5  
Monroe, Louisiana 71201  
(518) 388-1700



W. Lee Perkins  
Bar No. 08600  
Attorney for Defendant  
141 Desard St  
Monroe, Louisiana 71201  
(518) 387-5552



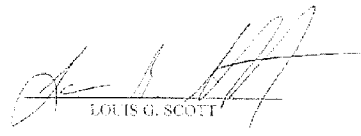
Peggy J. Sullivan  
Bar No. [redacted]  
Attorney for Defendant  
1203 Royal Avenue  
Monroe, Louisiana 71201  
(518) 387-6124



Carol Powell-Lexing  
Bar No. 21253  
141 Desard, Ste. 806  
Monroe, Louisiana 71201  
(518) 324-0700

CERTIFICATE OF SERVICE

The undersigned counsel certifies that a copy of this pleading was served by mail through the United States Postal Service on the day of 27<sup>th</sup> July, 2007 to the Honorable Reed Walters, District Attorney for the Judicial District.



LOUIS G. SCOTT



STATE OF LOUISIANA - PARISH OF LA SALLE (TWENTY- EIGHTH JUDICIAL DISTRICT COURT) NO. 82112  
 STATE OF LOUISIANA FILED: July 27 P M 24  
 VS. NO: 82112  
 MYCHAL D. BELL BY: Rebecca McClure  
 DEPUTY CLERK  
 ORDER  
 Considering the foregoing Motion to Arrest of Judgement.

443 IF IS ORDERED that the defendant's Motion to Arrest of Judgement is hereby set for the  
 X day of September, 2007 at 1:00 P.M. in the courtroom of the La Salle Parish

Courthouse.

Signed on this 31 day of July, 2007 in Jena.

20070730

J. P. Mauffray, Jr.  
 JUDGE

STATE OF LOUISIANA\*PARISH OF LA SALLE\*TWENTY-EIGHT JUDICIAL  
DISTRICT COURT

STATE OF LOUISIANA

FILED: \_\_\_\_\_

VS. NO.: 82112

MYCHAL D. BELL

BY: \_\_\_\_\_  
DEPUTY CLERK

\*\*\*\*\*  
MOTION FOR NEW TRIAL  
\*\*\*\*\*

NOW INTO COURT, through undersigned counsels, come Mychal Bell to  
request a new trial as follows:

I.

The ends of justice would be served the granting of new trial, for the following  
reasons:

- a) The matter was tried in an atmosphere where a fair and impartial jury could not be impaneled. The venue should have been changed. There was not a single person in La Salle Parish who was not affected by events relating to the charge. The events effected the churches, the schools, the hospitals, the police department, the businesses, the sheriff's office, the firefighters and every citizen.
- b) No African Americans were seated on the jury, and none were called to be questioned.
- c) The method used for the selection of the venire was not fair, because insufficient effort was made to obtain attendance of potential jurors who did not appear.
- d) The jury included friends of the district attorney and relatives of witnesses for the state.
- e) Based upon information obtained it appears that prejudicial remarks were made in violation of article 770 of the Code of Criminal Procedure.
- f) Considering the size of the parish and the closeness of the community, it was impossible for the jury to escape outside influences upon its deliberations without being sequestered.
- g) The case was tried by a prosecutor who should have recused himself because of personal interest in the outcome, and his service as attorney for the school board.

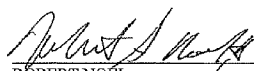
11


- h) The trial was conducted in an atmosphere not conducive to a fair trial.  
2.

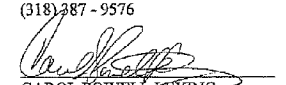
The defendant was denied a fair trial pursuant to Washington v. Strickland, in that defense counsel were ineffective and failed to provide adequate representation as follows:

- a) Failure to Move for change of Venue. Mychal Bell would assert that this matter is unusual in its notoriety and that it was at the time of trial and it is now impossible to impanel an impartial jury. The nature of the allegations of racial assaults and intimidation at Jena High School and the highly charged atmosphere should have resulted in a change of venue in this matter had trial counsel so moved;
- b) Failure assert objections to the racial composition to the jury venire. Mychal Bell asserts that the venire was bereft of African Americans or other minorities and that the lack of availability of African American potential jurors and the resultant all white jury denied him a trial in a case that centered on racial acrimony;
- c) Failure to assert objections to the Court's failure to impel the appearance for jury duty of potential African American jurors. Trial Counsel's failure to demand that the Court attach African American jurors who failed to appear to secure their availability for jury duty contributed to an all white jury and a denial of his right to a fair trial;
- d) Failure to issue a Batson objection or an objection pursuant to California v. Johnson resulted in an all white jury and the exclusion of African American jurors;
- e) Failure to object to the lack of jurisdiction of the District Court over matters involving a juvenile charged with an offense not enumerated in Children's Code Article 305;
- f) Failing to call witnesses at trial for the defense or to properly investigate the case;
- g) Failure to prepare for trial and;
- h.) Failure to file a motion to seek recusal of the District Attorney despite knowledge of facts that should have lead him to request recusal.

**WHEREFORE DEFENDANT REQUEST,** that a New Trial be granted.

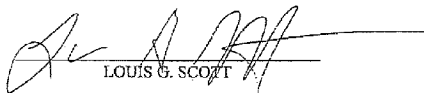
  
 ROBERT NOEL  
 CO-COUNSEL  
 Attorney at Law  
 3101 Armand, Suite 5  
 Monroe, Louisiana 71201  
 (318) 388 - 1700

  
 LOUIS G. SCOTT, LEAD COUSEL  
 Attorney at Law  
 510 Pine Street  
 Monroe, Louisiana 71201  
 (318) 323 - 6107  
 (318) 387 - 9576

  
 CAROL POWELL LEXING  
 CO-COUNSEL  
 Attorney at Law  
 141 Desiard Street  
 Monroe, Louisiana 71201  
 (318) 324 - 0700

**CERTIFICATE**

This is to certify that a true and correct copy of the foregoing Motion has been  
 sent by Unites States Mail, postage prepaid, to J. Reed Walters, District Attorney, P. O.  
 Box 1940 Jena, LA 71342, on this 10<sup>th</sup> day of August 2007.

  
 LOUIS G. SCOTT

STATE OF LOUISIANA

FILED:

201 JUL 21 1 51

BY CLERK & RECORDER  
LOCAL

vs. NO. 82112

MYCHAL D. BELL

DEPUTY CLERK

## MOTION IN ARREST OF JUDGMENT

The defendant, Mychal Bell, through counsel, moves the Court to arrest the judgment in his case pursuant to Louisiana Code of Criminal Procedure, Article 859, and states the following in justification:

The court is without jurisdiction of the case; specifically, Mychal Bell was charged with the offenses of Aggravated Second Degree Battery and Conspiracy to Commit Aggravated Second Degree Battery. Mychal Bell was 16 years old at the time of the offense, thus the Juvenile Court should have retained jurisdiction, since Louisiana Children's Code Article allows a juvenile to be charged as an adult for enumerated offenses only of which neither offense charged and tried in this matter was included. The jurisdiction in this matter is not discretionary and the matter once converted prior to trial should have been dismissed in District Court.

Conviction for this offense in District Court could only occur upon a plea of guilty to a lesser included offense to an enumerated crime or a jury finding him guilty at trial on a lesser included offense to an enumerated crime. State ex rel. Davis v. Criminal Dist. Court, 368 So. 2d 1092, 1092-1094 (La. 1979) is on point.

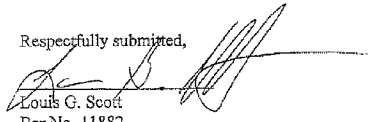
In Davis, the law at the time of that case provided for the prosecution of juveniles as adults only for capital cases. Davis was initially indicted for First Degree Murder and prior to trial the District Attorney amended the charge to Second Degree Murder. The Supreme Court vacated the conviction and ordered a remand to Juvenile Court.

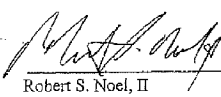
Mychal Bell would assert that although the law has changed in the inclusion of additional offenses and the enactment of the Louisiana Children's Code Article 305; the theory remains the same that once the charged was altered no longer conferring jurisdiction, it should have been removed to Juvenile Court.


2a

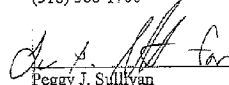
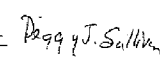
Movers pray that this Court arrest judgment in this matter and remove this matter to a juvenile court having jurisdiction over this matter.

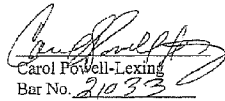
Respectfully submitted,

  
 Louis G. Scott  
 Bar No. 11882  
 Attorney for Defendant  
 510 Pine St  
 Monroe, Louisiana 71201  
 (318) 323-6107

  
 Robert S. Noel, II  
 Bar No. 17337  
 Attorney for Defendant  
 3101 Armand, Suite 5  
 Monroe, Louisiana 71201  
 (318) 388-1700

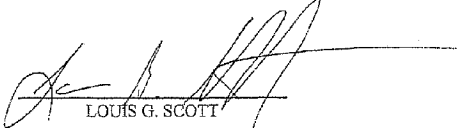
  
 W. Lee Perkins  
 Bar No. 08600  
 Attorney for Defendant  
 141 Desiard St.  
 Monroe, Louisiana 71201  
 (318) 387-5552

  
 Peggy J. Sullivan  
 Bar No.   
 Attorney for Defendant  
 1203 Royal Avenue  
 Monroe, Louisiana 71201  
 (318) 387-6124

  
 Carol Powell-Lexing  
 Bar No. 21033  
 141 Desiard, Ste. 806  
 Monroe, Louisiana 71201  
 318-324-0700

CERTIFICATE OF SERVICE

The undersigned counsel certifies that a copy of this pleading was served by mail through the United States Postal Service on the day of 27<sup>th</sup> July, 2007 to the Honorable Reed Walters, District Attorney for the Judicial District.

  
 LOUIS G. SCOTT

ATTEST A TRUE COPY  
  
 Cynthia A. Bradford  
 COURT & EX-Officio Recorder 2b

STATE OF LOUISIANA \* PARISH OF LA SALLE \* TWENTY- EIGHTH JUDICIAL  
DISTRICT COURT

STATE OF LOUISIANA FILED: \_\_\_\_\_

VS. NO.: 82112

MYCHAL D. BELL BY: \_\_\_\_\_  
DEPUTY CLERK

\*\*\*\*\*  
SECOND MOTION IN ARREST OF JUDGEMENT  
\*\*\*\*\*

NOW INTO COURT, through undersigned counsel, comes Mychal Bell, who moves for  
an Arrest of Judgment on the following grounds:

1.

The indictment is substantially defective in that some essential averments are missing.

2.

Article 473 of The Louisiana Code of Criminal Procedure provides that: "When the name  
of the person injured is substantial and not merely descriptive, such as when the injury is to the  
person, as in murder, rape, or battery, the indictment shall state the true name of the victim or the  
name, appellation, or nickname by which he is known."

3.

The Amended Bill of Information nor the original Bill of Information stated who the  
battery was committed upon. The Bill alleges a battery upon another person on or about  
December 4, 2006. The defendant had been in the presence of many people on or about  
December 4, 2006.

4.

Article 464 of the Louisiana Code of Criminal Procedure provides that an indictment or information shall be a plain, concise and definite written statement of the essential facts. The Bill of Information in this case did not inform the defendant who the victim was, what dangerous weapon was used, or the nature of the alleged serious injury.

5.

The notice given by the Bill of Information was not sufficient because it was not possible for the defendant prepare a defense. A reading of the information does not reveal what the state is alleging is a dangerous weapon. A reading of the information does not reveal what injuries are alleged to be serious.

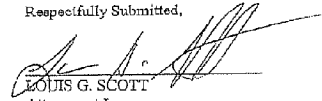
6.

Nothing contained in the record reveals what the dangerous weapon is supposed to be. Was it a fist, the floor, a stick, a shirt, a belt, a ring, a gun, a pen, a fingernail, a knife, a watch, a shoe or something else. The possibilities were almost endless. The defendant was therefore blind-sided by the allegation that a shoe was a dangerous weapon. The defendant did not know what he was defending against.

WHEREFORE, DEFENDANT PRAYS that his Second Motion in Arrest at Judgment be granted.



Respectfully Submitted,

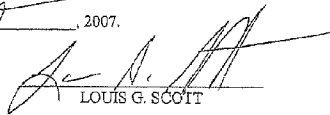


LOUIS G. SCOTT  
 Attorney at Law  
 LA Bar Roll #11882  
 510 Pine Street  
 Post Office Box 3305  
 Monroe, Louisiana 71210-3305  
 (318) 323-6107 - Telephone  
 (318) 387-9576 - Fax

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been sent by United States Mail, postage prepaid, to J. Reed Walters, District Attorney, P. O. Box 1940, Jena, Louisiana 71342 on this

2 day of August, 2007.



LOUIS G. SCOTT

STATE OF LOUISIANA

28TH JUDICIAL DISTRICT COURT

vs.

PARISH OF LASALLE

MYCHAL BELL

STATE OF LOUISIANA

MOTION FOR POST VERDICT JUDGMENT OF ACQUITTAL

NOW INTO COURT comes defendant, by and through counsel of record in this cause, pursuant to Article 821 of the Louisiana Code of Criminal Procedure, and for his Motion for Post Verdict Judgment of Acquittal says:

I.

The evidence contained in the record is insufficient as a matter of law to support the verdict of the jury finding the defendant guilty of the offense of Aggravated Second Degree Battery and Conspiracy to commit Aggravated Second Degree Battery.

1.

The evidence presented by the State, viewed in its best light, showed that the defendant punched the victim, Justin Barker causing him to fall to the ground. The evidence also shows that several other persons kicked the victim after he was down. There was no expert medical testimony as to when the victim became unconscious, however at some point, during the incident, the victim lost consciousness.

2.

The evidence presented by the State, viewed in its best light did not show serious bodily injury. There was no expert medical testimony as to the extent of the victims injuries. Several lay witnesses testified that the victim was unconscious. There was also testimony that the victim was released from the hospital and attended a ring ceremony later that night.

3.

46

The evidence presented by the State, viewed in its best light, showed that the defendant was in the presence of some of the other accused defendants before the incident but showed no plan, combination, criminal conspiracy nor any other action so as to become a principal to any acts committed by others during the incident.

4.

The evidence presented by the State, testimony viewed in its best light, showed that the victim had multiple abrasions, bleeding and swelling on the head and a period of unconsciousness. There was testimony by the victim that he suffered memory losses and headaches that he had not had before the incident. There was testimony by an emergency room nurse that the patient had a history of migraine headaches. There was no clear testimony as to the duration of the unconsciousness or when it began.

5.

The evidence presented by the State, testimony viewed in its best light, showed that the defendant struck the victim with his bare hand. While multiple witnesses to the incident testified that after the punch, the victim was then beset upon by others, only one witness testified that the defendant kicked the victim. All of the other witnesses testified that they did not see the defendant kick the victim.

6.

The evidence presented by the State, testimony viewed in its best light, showed that other defendants in the incident kicked the victim but did not use any weapons. The State would rely on testimony that the other defendants wore tennis shoes while kicking the victim. While a tennis shoe may be used as a dangerous weapon see State vs. Munoz, 575 So. 2d 848, in the present case, the tennis shoes worn by the other defendants were not used in a manner likely to result in death or grave bodily injury.

7.

There is no evidence contained in the record that the defendant was involved in either a conspiracy or that the defendant aided or abetted the crime. Therefore, no rational trier of fact could find the defendant guilty of the offense of Aggravated Second Degree Battery and Conspiracy to commit Aggravated Second Degree Battery beyond a reasonable doubt and to a moral certainty as required by

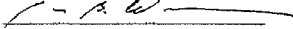
4b

II.

There is no evidence in the record which proves that the defendant participated in nor had knowledge of any conspiracy to commit Aggravated Second Degree Battery and Conspiracy to commit Aggravated Second Degree Battery beyond a reasonable doubt and to a moral certainty as required by law.

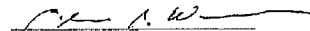
III.

WHEREFORE, the defendant moves the Court to set aside the verdict of the jury and grant his Motion for Post Verdict Judgment of Acquittal on all charges or in the alternative find the defendant not guilty of Conspiracy to commit Aggravated Second Degree Battery and guilty of the lesser and included offense of Simple Battery.

by:   
**BLANE G. WILLIAMS # 25936**  
**706 LEE ST.**  
**ALEXANDRIA, LA 71301**

CERTIFICATE

I hereby certify that a copy of the above Motion has been served on the LaSalle Parish District Attorney's Office by placing in the U. S. Mail postage prepaid on this the 19th day of **JULY, 2007**.

  
 Blane G. Williams  
 Attorney for Defendant

STATE OF LOUISIANA PARISH OF LASALLE TWENTY-EIGHTH JUDICIAL DISTRICT COURT  
STATE OF LOUISIANA DISTRICT COURT  
VS. No. 8312 FILED: \_\_\_\_\_

MICHAEL D. BELL BY: \_\_\_\_\_ DEPUTY CLERK  
THIRD JUDICIAL DISTRICT OF LOUISIANA

NOW INFO COURT through undersigned counsel comes MICHAEL D. BELL who moves to effect the judgment of guilty herein as follows:

1

The defendant cannot be found guilty of Aggravated Second Degree Battery and Conspiracy to Commit Aggravated Second Degree Battery in this case because to do so would constitute double jeopardy.

2

Although usually, a person can be tried and found guilty of conspiracy to commit a crime and the crime itself, it cannot be done in this case. The same evidence was used to show the conspiracy in our need to prove the Aggravated Second Degree Battery.

3

Since the evidence used was limited to prove both crimes, our verdict must be declared null, void and without legal effect.


4

The defense attorney admitted in his closing statement "we even proved two crimes." See La. P. 231.

5

From reviewing the evidence it would be impossible to tell which evidence was relied upon to prove that the defendant was a principal and which evidence was relied upon to prove conspiracy. A conviction on both counts clearly violates the defendant's rights to be placed back in society as secured by Amendment V of the Constitution of the United States, not Amendment VI.

WHEREFORE DEFENDANT PRAY, that this Motion on Grant of Judgment be granted and that the greater charge be dismissed and found to be null and void.

Respectfully Submitted,  
  
Honorable Judge  
510 Pine Street  
Baton Rouge, LA 70801  
225-383-1234  
225-383-1234

OFFICE OF THE CLERK

I hereby certify that a copy of the foregoing Motion or Petition as Cause of Action has been sent by United States Mail, postage prepaid, to the U.S. District Court, Baton Rouge, Louisiana, 70801, on this 12th day of 2017.

  
CLERK

STATE OF LOUISIANA PARISH OF LA SALLE TWENTY-EIGHTH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA FILED: \_\_\_\_\_

VS. No. 8112

MYCHAEL D. BELL

VS: \_\_\_\_\_ DEPUTY CLERK

ORDER

Considering the foregoing Third Motion to Arrest of Judgment:

IT IS ORDERED that the Defendant's Third Motion to Arrest of Judgment is overruled.

day of \_\_\_\_\_ 2007 at \_\_\_\_\_ o'clock in the afternoon of

the La Salle Parish Courthouse

Signed on this \_\_\_\_\_ day of \_\_\_\_\_ 2007 in \_\_\_\_\_

LaSalle Parish

JUDGE

State of Louisiana  
Parish of LaSalle

### STATEMENT OF MICHAEL R. BRINSON

I am Michael R. Brinson and I reside at Olla, LA. I receive my mail at P.O. Box 883, Olla, LA 71465. I formerly lived at 1125 Washington St., Apt. 125, Olla, LA 71465. Since I moved in August 2005 I have received mail forwarded from that address.

I have seen the "List of Randomly Selected Jurors" for court date 6/25/07, published in the Jena Times of May 23, 2007. My name is on the list but I never received any summons or other notification from anyone about this jury service.

I have read the above statement and it is true and accurate to the best of my knowledge. I have been given the opportunity to review it and make any changes I thought were necessary.

Signed,

Michael Brinson  
Name

8-30-07  
Date

Torrey Davis  
Witness

State of Louisiana  
Parish of LaSalle

### STATEMENT OF DENEEN DANGERFIELD

My name is Deneen Dangerfield. I reside at 292 Thonfa St, Jena, LA. I went to Jena High School and graduated with the class of 1982.

Our high school class was very close and we were all friends and we have remained friendly throughout the years. David Barker, the father of Justin Barker, and Duwayne Bailey, who served as a juror in Mychal Bell's trial, were both my classmates in the Jena High class of 1982.

I have read the above statement and it is true and accurate to the best of my knowledge. I have been given the opportunity to review it and make any changes I thought were necessary.

Signed,  
Deneen Dangerfield  
Name

9/30/07  
Date

Terry Davis  
Witness



State of Louisiana  
Parish of LaSalle

### STATEMENT OF JOHN MCPHERSON

My name is John McPherson and I live at 1090 E. Elm St. in Jena, LA. I work at Shelby Lowe Inc.

In the morning before work I sometimes stop at Airport Grocery for something to eat for lunch. I recall one morning, in the summer of 2006, when I went to Airport Grocery, I saw David Barker and Dwayne Bailey at the back end of a truck having a conversation, looking like a friendly conversation.

I have read the above statement and it is true and accurate to the best of my knowledge. I have been given the opportunity to review it and make any changes I thought were necessary.

Signed,

John McPherson

Name

8/29/07

Date

Larry Davis

Witness

State of Louisiana  
Parish of Ouachita

STATEMENT OF BENJY LEWIS

My name is Benjy Lewis and I reside in W. Monroe, LA. I am presently a football coach Monroe. I was a coach at Jena High School in Jena, LA, from the Fall of 2004 to the Spring of 2007. I left that job to take the position here in Monroe where I grew up.

While coaching at Jena High, I was well acquainted with Mychal Bell, who was a player on the school's football team.

I was working at Jena High School on December 4, 2006. Lunch period was just ending and I was coming out of the Field House when I saw student Justin Barker, along with a girl, walking out of the gym. Just as they came out, I saw student Malcolm Shaw approach Justin from the right and throw a punch at his face. The punch hit Justin on the right side of his face around the temple area. Malcolm Shaw was wearing a green jacket. Justin fell down after the punch. Some other students were starting to kick Justin and I rushed to help him. Eric Scroggs had got there shortly before me and was helping Justin. We woke him up and got the other students away from him. From the time of the punch, I got to him in no more than 10 seconds and he was awake about 20 seconds after that. Coach Manning came up as well. An ambulance arrived about 10 minutes later to take Justin to the hospital. I did not notice Mychal Bell there during this time.

Later that afternoon, I am not exactly sure what time, but probably somewhere between 12:30 and 2:00 p.m., I saw Mychal Bell in the Field House. He was wearing a t-shirt and shorts. I asked Mychal if he had been involved in the incident and he said no. Assistant Principal Burgess came in accompanied by a police officer. I don't know the officer's name but it was not the Chief of Police. They asked Mychal if they could search his locker and Mychal pointed it out to them. They looked through his locker and I asked what they were looking for. They said they were looking for a green jacket. They did not find a green jacket in Mychal's locker. They also looked in a few other lockers and then they left.

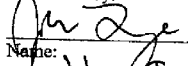
I was never contacted by the lawyer who represented Mychal at trial. If he had talked to me, I would have answered his questions and provided him with the same information.

I have read the above statement and it is true and accurate to the best of my knowledge. I have been given the opportunity to review it and make any changes I thought were necessary.

Signed,

  
Benjy Lewis Date 9/4/07

Witnessed by:

  
Name: John Tye

{00040627.DOC}

39

BOOKET NO. \_\_\_\_\_  
FILED: \_\_\_\_\_  
2007 SEP -4 A 11: 27  
BY CLERK & RECORDER  
LAFAYETTE PARISH, LA

STATE OF LOUISIANA  
COURT OF APPEAL, THIRD CIRCUIT

NO: KW 07-01106

Judgment rendered and mailed to all  
parties or counsel of record on  
September 14, 2007.

STATE OF LOUISIANA  
VERSUS  
MYCHAL D. BELL

FILED: 09/05/07

On application of Mychal D. Bell for Writ of Review in No. 82112 on the docket of  
the Twenty-Eighth Judicial District Court, Parish of LaSalle, Hon. John Philip  
Mauffray, Jr.

	Counsel for:
Louis Granderson Scott	Mychal D. Bell
Robert S. Noel II	
Peggy J. Sullivan	

	Counsel for:
Hon. J. Reed Walters	State of Louisiana

Lake Charles, Louisiana, on September 14, 2007.

**WRIT GRANTED AND MADE PEREMPTORY; STAY DENIED:** The trial  
court erred in denying Defendant's motion in arrest of judgment regarding his  
conviction for aggravated second degree battery. The Defendant was not tried on an  
offense which could have subjected him to the jurisdiction of the criminal court  
pursuant to either La.Ch.Code arts. 305 or 857; therefore the provision of La.Ch.Code  
art. 863, permitting the trial court to retain criminal jurisdiction over juvenile  
defendants under limited circumstances, is inapplicable, and jurisdiction remains  
exclusively in juvenile court.

Accordingly, the ruling of the trial court denying Defendant's motion in arrest  
of judgment, as to his conviction for aggravated second degree battery, is hereby  
reversed, vacated and set aside. The motion in arrest of judgment is granted, and the  
conviction for aggravated second degree battery is vacated.

NO: KW 07-01106  
 September 14, 2007  
 Page 2

Further, the Defendant's request for a stay of all matters in district court, as well as those pending on other charges in juvenile court, is hereby denied.

<u>MTA</u>	<u>JDP</u>	<u>JTG</u>
MTA	JDP	JTG

A TRUE COPY

Lake Charles, La. 9-14-2007

R. D. Burnett

Chief Clerk, Court of Appeal, Third Circuit

## PREPARED STATEMENT OF THE ANTI-DEFAMATION LEAGUE

**Statement of Anti-Defamation League  
on  
Jena 6 and the Role of Federal Intervention in Hate Crimes and Race-Related  
Violence in Public Schools  
House Judiciary Committee  
October 16, 2007**

The Anti-Defamation League (ADL) is pleased to provide this statement as the House Judiciary Committee conducts hearings on "Jena 6 and the Role of Federal Intervention in Hate Crimes and Race-Related Violence in Public Schools."

ADL and, especially, its New Orleans Regional Office, have closely followed the situation at Jena High School and in the Jena community over the past several months. The League is deeply concerned about the racial tensions in the community and allegations of unfair treatment between black and white students, as well as the allegations of racial disparity in subsequent criminal charges filed against six black students.

We share the Committee's view that the escalating series of intimidating and violent events in Jena is worth examining to determine what guidance can be provided for other communities. The inadequate response to the intimidating tactics and escalating violence in Jena provides lessons for school administrators and community leaders on the need to confront racial and ethnic tensions directly and constructively – and to defuse them before they can lead to confrontations and reprisals. In addition to our concerns for the students directly involved, our thoughts are also on the future well-being of all students at Jena and all members of the community. We have offered to meet with school leaders to discuss ways in which the League might be able to bring our extensive education and community resources and programming to the Jena schools in an effort to help heal tensions and constructively bring the community together.

This statement will provide some background – explaining why this issue is important to ADL, why hate crimes laws and the pending Local Law Enforcement Hate Crime Prevention Act are relevant, how extremists are seeking to exploit the situation in Jena, and what can be done to promote anti-bias intervention and more long-term programmatic initiatives. The statement also summarizes ADL's anti-bias resources and provides a listing of selected materials on hate crime and hate group response and counteraction.

I. Why the Issue is Important to the Anti-Defamation League

Since 1913, the mission of ADL has been to "stop the defamation of the Jewish people and to secure justice and fair treatment to all citizens alike." Dedicated to combating anti-Semitism, prejudice, and bigotry of all kinds, defending democratic

ideals and promoting civil rights, ADL is proud of its leadership role in the development of innovative materials, programs, and services that build bridges of communication, understanding, and respect among diverse racial, religious, and ethnic groups.

Over the past decade, the League has been recognized as a leading resource on effective responses to violent bigotry, conducting an annual *Audit of Anti-Semitic Incidents*, drafting model hate crime statutes for state legislatures, and serving as a principal resource for the FBI in developing training and outreach materials for the Hate Crime Statistics Act (HCSA), which requires the Justice Department to collect statistics on hate violence from law enforcement officials across the country.

The attempt to eliminate prejudice requires that Americans develop respect and acceptance of cultural differences and begin to establish dialogue across ethnic, cultural, and religious boundaries. Education and exposure are the cornerstones of a long-term solution to prejudice, discrimination, bigotry, and anti-Semitism. In addition, effective responses to hate violence by public officials and law enforcement authorities can play an essential role in deterring and preventing these crimes.

## II. Background: Confronting Escalating Community Tensions in Jena

The September 28, 2007 issue of *Education Week* carried a detailed report on mounting tensions in the Jena schools and the community ('Jena Six:' Case Study in Racial Tensions *Education Week*, September 28, 2007.

[http://www.edweek.org/ew/articles/2007/10/03/06jena\\_h27.html?tmp=2035878054](http://www.edweek.org/ew/articles/2007/10/03/06jena_h27.html?tmp=2035878054).

According to *Education Week*, the escalating series of incidents started in August, 2006 when a black student at a Jena High School assembly asked if blacks were "allowed" to sit under a tree on campus that had been a frequent gathering place for white students. School officials told the student that blacks were allowed to sit there, but the next day nooses were found hanging from that tree. Even if the students involved considered the hanging of nooses on school grounds a joke or a prank, school officials and administrators should have taken decisive steps to demonstrate that these actions were absolutely unacceptable.

In addition to the highly-publicized Jena noose episode, similar incidents involving nooses recently have been reported at schools in College Park, Maryland; Columbia, South Carolina; and on Columbia University's campus in New York City. With its past associations with lynchings in the South, the noose has long been used to threaten and intimidate others, particularly black Americans. Sadly, we are still fighting the old demons of hatred and prejudice – even among young people who have no memory of the civil rights era and Jim Crow.

We believe the situation in Jena – and the copycat incidents that followed – demonstrate the need for education, so that our young people have a deeper understanding of the consequences of unchecked racism, bigotry and hate.

### III. Addressing Juvenile and School-Based Bias-Motivated Violence

#### A. Data on Juvenile Hate Crime

Unfortunately, there is a paucity of published information about juvenile hate crime offenders. A 1996 OJJDP "Report to Congress on Juvenile Hate Crime" stated: "the research team found very little information pertaining to the issue of hate crimes in general and even less on the nature and extent of juveniles' involvement."

The FBI's annual Hate Crime Statistics Act (HCSA) report, though clearly incomplete, provides the best snapshot of the magnitude of the hate violence problem in America. As documented by the FBI in its 2005 HCSA report, <http://www.fbi.gov/ucr/hc2005/index.html>, violence directed at individuals, houses of worship, and community institutions because of prejudice based on race, religion, sexual orientation, national origin, and disability is far too prevalent. Highlights from the Bureau's 2005 report include:

- Approximately 54.7 percent of the reported hate crimes were race-based, with 17.1 percent on the basis of religion, 14.2 percent on the basis of sexual orientation, and 13.2 percent on the basis of ethnicity;
- Approximately 67.1 percent of the reported race-based crimes were anti-black, 21.1 percent of the crimes were anti-white, and 5.1 percent of the crimes were anti-Asian/Pacific Islander. The number of hate crimes directed at individuals on the basis of their national origin/ethnicity decreased from 972 in 2004 to 944 in 2005.
- The 848 crimes against Jews and Jewish institutions comprised 11.8 percent of all hate crimes reported in 2005 -- and 69.1 percent of the reported hate crimes based on religion. The report states that 128 anti-Islamic crimes were reported in 2005, 10.4 percent of the religion-based crimes and a decrease from 156 reported anti-Islamic crimes in 2004.
- Of the 12,417 police and sheriffs departments that reported HCSA data to the FBI in 2005, more than 84 percent of these agencies affirmatively reported to the FBI that they had zero hate crimes. Only 2,037 agencies reported one or more hate crimes to the Bureau. Even more troublesome, over 4000 agencies did not participate in this hate crime data collection effort at all. These figures strongly suggest a serious undercounting of hate crimes in the United States.

The FBI's HCSA report does not provide specific information about either juvenile hate crime offenders or victims. However, in every year for the past decade, schools and colleges have been the third most frequent location for hate crime incidents in America. An October 2001 report by the Justice Department's Bureau of Justice Statistics provided disturbing information about the too-frequent involvement of juveniles in hate crime incidents. This report, <http://www.ojp.usdoj.gov/bjs/abstract/hcm99.htm>, carefully analyzed nearly 3,000 of the 24,000 hate crimes to the FBI from 1997 to 1999, and revealed that a

disproportionately high percentage of both the victims and the perpetrators of hate violence were young people under 18 years of age:

- 33 percent of all known hate crime offenders were under 18; as were 31 percent of all violent crime offenders and 46 percent of the property offenders.
- Another 29 percent of all hate crime offenders were 18-24.
- 30 percent of all victims of bias-motivated aggravated assaults and 34 percent of the victims of simple assault were under 18.
- 34 percent of all persons arrested for hate crimes were under 18; as were 28 percent of those arrested for violent hate crimes and 56 percent of those arrested for bias-motivated property crimes.
- Another 27 percent of those arrested for hate crimes were 18-24.

#### B. Hate Crime Statutes: A Message to Victims and Perpetrators.

In partnership with human rights groups, civic leaders and law enforcement officials can advance police-community relations by demonstrating a commitment to be both tough on hate crime perpetrators and sensitive to the special needs of hate crime victims. While bigotry cannot be outlawed, hate crime penalty enhancement statutes demonstrate an important commitment to confront criminal activity motivated by prejudice.

At present, forty-five states and the District of Columbia have enacted hate crime penalty-enhancement laws, many of which are based on an ADL model statute drafted in 1981. In Wisconsin v. Mitchell, 508 U.S. 476 (1993), the U.S. Supreme Court unanimously upheld the constitutionality of the Wisconsin penalty-enhancement statute – effectively removing any doubt that state legislatures may properly increase the penalties for criminal activity in which the victim is intentionally targeted because of his/her race, religion, sexual orientation, gender, gender identity, or ethnicity.

However, the paradigm of enhanced penalties for hate crime perpetrators is not well-suited for juvenile offenders and school-based incidents – especially for first-time and non-violent offenders. The enforcement of a hate crime statute against a juvenile is, essentially, an indication that the system has failed – it would have been much better to have prevented the bias-motivated conduct in the first place.

#### C. The Local Law Enforcement Hate Crime Prevention Act

The League has also helped lead a broad coalition of civil rights, religious, education, law enforcement and civic organizations in support of H.R. 1592, the Local Law Enforcement Hate Crimes Prevention Act (LLEHCPA). This legislation, approved by the House of Representatives by a vote of 237-180 on May 3, 2007 and added by the Senate as an amendment to their version of the Department of Defense Authorization legislation on September 27, would establish a new federal criminal code provision, 18 U.S.C. §249. This section would complement an existing statute, 18 U.S.C. §245 – one of the primary statutes used to combat racial and religious bias-motivated violence. Enacted in 1968, 18 U.S.C. §245 prohibits



intentional interference, by force or threat of force, with the enjoyment of a federal right or benefit (such as voting, going to school, or working) on the basis of race, color, religion, or national origin.

The Local Law Enforcement Hate Crime Prevention Act would strengthen existing federal hate crime laws in two ways: First, the bill would eliminate a serious limitation on federal involvement under existing law – the requirement that a victim of a bias-motivated crime was attacked because he/she was engaged in a specified federally-protected activity, such as serving on a jury or attending public school. Second, current law, 18 U.S.C. Sec. 245, authorizes federal involvement only in those cases in which the victim was targeted because of race, color, religion, or national origin. The LLEHCPA would also authorize the Department of Justice to investigate and prosecute certain bias-motivated crimes based on the victim's actual or perceived sexual orientation, gender, gender identity, or disability. Federal law does not currently provide sufficient authority for involvement in these four categories of cases. .

There are two elements of the LLEHCPA that merit special attention at this hearing. First, the measure would give local law enforcement officials important tools to combat violent, bias-motivated crime. Federal support – through training or direct grants and assistance – will help ensure that bias-motivated violence is effectively investigated and prosecuted at the state and local level. The legislation would also facilitate federal investigations and prosecutions when local authorities are unwilling or unable to achieve a just result. Second, the LLEHCPA includes an important new data collection requirement for crimes committed by, and crimes directed against, juveniles. This information will be incorporated into the FBI's HCSA data collection programs and publications.

#### IV. Extremists' Efforts to Exploit the Jena Community Tensions

White supremacists have reacted to the national attention focused on the Jena 6 with violent language and a call for violent action and intimidation tactics.

- Bill White, leader of the Virginia-based neo-Nazi American National Socialist Workers Party, posted the addresses of the "Jena 6" on his Web site, under the title "Lynch The Jena 6." He also stated in the post that, "if these ni—ers are released or acquitted, we will find out where they live and make sure that white activists and white citizens in Louisiana know it. We'll mail directions to their homes to every white man in Louisiana if we have to in order to find someone willing to deliver justice." White continues to post racist statements on his Web site regarding the Jena 6 and their addresses, phone numbers, and relatives' names remain on his site.
- New Jersey-based white supremacist and radio host Hal Turner is selling what he calls the "Jena-6' style Hangman's Noose!" on his Web site. Advertising the noose, Turner wrote that it was a "great conversation piece; just hang one in a public area of your town and you'll get the whole town

talking!" He added, "Hang one of these in YOUR town - or better yet on a tree in YOUR yard! The Black 'Race-Hustlers' can't protest these things everywhere, so let's show them what we really think about Black Crime and their disgusting rallies to support the 6 black thugs in Jena, LA.!"



Other white supremacists made efforts to organize around the case of the Jena 6 by painting the issue as one in which a white victim of a black hate crime was being unfairly treated and targeted.

- On Stormfront, the largest and most popular white supremacist Internet forum, two members of the forum created a petition entitled "Justice for Justin Barker [the victim of the assault by the Jena 6], his family and Jena's European-American community." The document states that "no Government should ever expect their people to remain idle while six vicious young black men are made into national heroes for a 'Civil Rights' movement that does not recognize Civil Rights for Whites as well."
- The Brotherhood of Klans (BOK), a large and active Ku Klux Klan group based in Marion, Ohio, is planning a parade/protest in Jena "in support of this White Victim Child of a racial hate crime." The BOK Website reports that the

group is filling out an application to protest and will soon announce the date of the event.

The community tensions in Jena also have prompted a powerful response from the New Black Panther Party (NBPP), the most anti-Semitic and racist black militant group in the United States.

- The NBPP promoted and mobilized for a large rally held in September in support of the six defendants, which drew attendees in the tens of thousands. In the months leading up to the rally and ever since, the NBPP has used the Jena case to bring attention to other issues facing the black community, including police violence and racial inequalities in the U.S. justice system. Most recently, the group announced that the Jena case would be among the key issues addressed as part of its annual conference, the theme of which was "The Attack on Black America."
- Days after the September protest rally in Jena, Malik Zulu Shabazz, NBPP national chairman, announced that the organization would be implementing an effort called the "Security and Protection Committee of the Jena Six" (SPC-Jena 6) in response to threats from white supremacists that followed the mass rally. The goal of the initiative, in which NBPP members and other volunteers would patrol the streets of Jena, would be to provide "personal security" for the families of the six defendants, as well as for Jena's black community in general. "In the spirit of the Deacons of Defense," the NBPP announcement stated, "we intend to exercise our full range of legal rights of defense and protection to ensure that this very real threat of violence is neutralized. I want to be clear, in the name of God we as Black Men will not stand idly by and be weak in this hour." David X, NBPP Information Minister/Defense Minister, echoed Shabazz' call to action in an interview with *New York Amsterdam News*, vowing to mobilize and adding that the effort had been missing "a little touch of force."

#### V. Anti-Bias Intervention is Necessary

The extremist exploitation of the Jena situation is appalling, and law enforcement official should be keeping a close watch on these activities. For this Committee and for the Congress, however, a high priority should be the need for anti-bias intervention and programming in our nation's public schools.

#### A. The Classic Continuum of Prejudice

Anti-bias educators describe a classic continuum of prejudice. The progression of hate can be understood by imagining a pyramid with different levels, starting at the bottom, the base, with stereotyping and acts of bias (e.g., jokes and slurs, insensitive remarks), and escalating into prejudice and bigotry (e.g., name-calling and bullying, epithets), discrimination (e.g., harassment, housing discrimination), to, vandalism, and violence (e.g., assaults, murders) at the apex. This pyramid shows biased behavior growing in complexity from the bottom to the top. Although the

behaviors at each level negatively impact individuals and groups, as one moves up the pyramid, the behaviors have more violent and threatening consequences. Like a pyramid, the upper levels are supported by the lower levels. If people or institutions fail to address these actions and treat behaviors on the lower levels as being acceptable or "normal," behaviors at the next level become more accepted.

Criminal behavior and violence is very rarely the beginning – it frequently occurs at the end of an escalating pattern of unresolved incidents. Because of this fact, teachers, school administrators, parents, community-based organizations and government officials and policymakers must ensure that we are doing everything possible to interrupt this dangerous evolution, to recognize early warning signals, and to intervene before violence erupts.

#### B. A Snapshot of Bias in Schools Today

Children are not born prejudiced — bigoted behavior is *learned* behavior. By preschool age, children have already adopted negative stereotypes and attitudes toward those they perceive as "others." Children labeled as "different" for *any* reason are often victimized and isolated. Left unexamined, biased attitudes can lead to biased behaviors, which have the potential to escalate into violent acts of hate.

Research consistently indicates that school violence, bias, name-calling, bullying, and other forms of harassment are serious concerns for school communities:

- More than a third of all students ages 12–18 report having observed hate-related graffiti and one in nine students have had hate-related words used against them.<sup>1</sup>
- Recent research indicates that almost a third of students in grades 6–10 report direct involvement in bullying each month, either as a target, perpetrator, or both.<sup>2</sup>
- An estimated 10,000 children stay home from school at least once a month due to the fear of being bullied.<sup>3</sup>
- Students who are bullied are more likely than other children to be depressed, lonely, and anxious, have low self-esteem, feel unwell, and think about suicide.<sup>4</sup>

<sup>1</sup> Rachel Dinkes et al., "Indicators of School Crime and Safety: 2006," (Washington, DC: U.S. Departments of Education and Justice, 2006). Available at <http://nces.ed.gov/programs/crimeindicators/index.asp>

<sup>2</sup> Tonja R. Nansel et al., "Bullying Behaviors among US Youth: Prevalence and Association with Psychosocial Adjustment," *Journal of the American Medical Association* 285, no. 16 (2001): 2094-2100.

<sup>3</sup> Centers for Disease Control and Prevention, "School Health Guidelines to Prevent Unintentional Injuries and Violence," *Morbidity and Mortality Weekly Report* 50 (December 2001).

Available at [www.cdc.gov/mmwr/PDF/rr/rr5022.pdf](http://www.cdc.gov/mmwr/PDF/rr/rr5022.pdf)

<sup>4</sup> Susan P. Limber, "Addressing Youth Bullying Behaviors," *Proceedings from the American Medical Association Educational Forum on Adolescent Health: Youth Bullying*. (Chicago, IL: American Medical Association, 2002). Available at <http://www.ama-assn.org/ama1/pub/upload/mm/39/youthbullying.pdf>

- Students who bully their peers are more likely to get into frequent fights, vandalize or steal property, become truant from school, drop out of school and carry a weapon.<sup>5</sup>
- It is important to remember that adults can bully children, too. A study of urban elementary school teachers in the U.S. found that 40 percent of teachers admitted that they had bullied a student, and 3 percent said they did so frequently.<sup>6</sup>
- A recent survey reports that almost 90 percent of students hear gay epithets in school on a regular basis.<sup>7</sup>
- An overwhelming majority of students (83 percent of girls and 79 percent of boys) report having experienced sexual harassment during their school lives, and more than 25 percent of students regularly experience sexual harassment at school.<sup>8</sup>
- Research also indicates a significant disparity between the educational experiences of students of color versus those of most of their white peers. A recent school climate survey shows that students of color feel less respected by their teachers and are less likely to believe that teachers treat everyone fairly or care about their academic success.<sup>9</sup>
- Another report demonstrates that students of color are more likely to report academic shortfalls, and see drop-out rates, truancy, unrest, drug and alcohol abuse, fighting and weapons, profanity and disrespect for teachers as serious problems in their schools.<sup>10</sup>

While academic knowledge is critical to the maintenance and building of our democratic society, given the rise in bias-motivated violence, the upsurge of anti-immigrant animus, the prominence of safety issues in the schools, and the high percentage of youth who have experienced or witnessed prejudice, a sole preoccupation with traditional academic fields is not enough. When diversity –

<sup>5</sup> Tonja R. Nansel et al., "Relationships between Bullying and Violence Among US Youth, *Archives of Pediatric Adolescent Medicine*, no. 157 (2003): 348-353

<sup>6</sup> Stuart W. Twemlow et al., "Teachers Who Bully Students: A Hidden Trauma," *International Journal of Social Psychiatry*, no. 52 (2006): 187-198.

<sup>7</sup> Joseph G. Kosciw and Elizabeth M. Diaz, "The 2005 National School Climate Survey: The experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools, (New York: GLSEN, 2006)..

Available at [http://www.glsen.org/binary-data/GLSEN\\_ATTACHMENTS/file/585-1.pdf](http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/585-1.pdf)

<sup>8</sup> American Association of University Women Educational Foundation, *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School* (Washington, D.C., 2001): 4.

Available at [www.aauw.org/member\\_center/publications/HostileHallways/hostilehallways.pdf](http://www.aauw.org/member_center/publications/HostileHallways/hostilehallways.pdf)

<sup>9</sup> Brian K. Perkins, "Where We Learn: The Cube Survey of Urban School Climate," (Alexandria, VA: National School Boards Association, 2007)

Available at <http://www.nsba.org/site/docs/38100/38081.pdf>

<sup>10</sup> Jean Johnson, Ana Maria Areumi and Amber Ott, "Reality Check 2006: How Black and Hispanic Families Rate Their Schools," (New York: Public Agenda, 2006)

Available at <http://www.publicagenda.org/research/pdfs/rc0602.pdf>

differences among race, religion, sexual orientation, language, culture, learning style, class – is not valued and respected, the resulting fear and lack of understanding can fuel inter-group tension and violence. Left uninterrupted, today's name-calling can easily become tomorrow's hate crime.

### C. The Federal and State Commitment to Anti-Bias Education Should be Increased

Nowhere is the rapidly increasing diversity of the United States better reflected than in our nation's schools. Today, more than 40 percent of the children in public schools are from what have traditionally been called "minority" groups.<sup>11</sup> It is projected that this figure will rise to almost 50 percent within the next two decades. While this shift represents tremendous opportunities, interaction among diverse groups also poses the challenges of intergroup tension, stereotypes, and discrimination.<sup>12</sup>

The demographic disparity between an 85 percent white teaching force<sup>13</sup> and an increasingly diverse student population further highlights the need for educators to possess the knowledge and skills to effectively teach students with whose culture, language, learning style, language, and experience they may not be familiar.

Academic achievement is not the only challenge schools face. The increased attention on youth violence and hate crimes, school harassment, and bullying point to the importance of providing students an educational environment in which social, ethical, and academic development are inseparable goals. Simply working to improve test scores will do little to increase the capabilities of tomorrow's adults to live peaceably and effectively in a nation that is becoming increasingly diverse – or to function productively in a changing workplace that demands higher education qualifications. What is needed now is an approach that fosters positive intergroup relations, challenges prejudice, and enhances learning for all students: an increased focus on anti-bias education.

Anti-bias education is an active commitment to challenging prejudice, stereotyping, and all forms of discrimination. Anti-bias education provides schools a framework to fight personal and institutional prejudice and advance student learning through responses based on teacher training, inclusive curriculum, classroom instruction, and the building of a school community. Ultimately, anti-bias education empowers students to create a more just and peaceful world, where all groups share equal access to opportunity and every person can flourish.

According to a recent study, relational trust in the schools, which incorporates respect, competence, integrity and regard for others, is of immense significance in

<sup>11</sup> U.S. Department of Education, National Center for Education Statistics, "The Condition of Education 2007," (Washington, DC, 2007): 26.

<sup>12</sup> James A. Banks et al., "Diversity Within Unity: Essential Principles for Teaching and Learning in a Multicultural Society," *Phi Delta Kappan* 83, no. 3 (November 1, 2001): 196.

<sup>13</sup> National Center for Education Information, "Profile of Teachers in the U.S. 2005," (Washington, DC, 2005)

creating this environment and improving student academic achievement.<sup>14</sup> Teachers are active partners in this process and it is critical that they have all the resources necessary to be involved in creating an anti-bias learning environment. This necessitates ensuring that they have skills training and professional development opportunities available to them to aid them in their efforts to meet the needs of diverse students and promote an anti-bias environment. Parents, caretakers, family members and the larger community must also be invited to participate in the learning process, as their role in providing the context in which students learn and are motivated to learn is critical.

Schools have the power – and the responsibility – to equip students with the skills and knowledge to be successful in our increasingly diverse society and to make that society a place where the ideals of equity and democracy are embodied in the social order. However, to do so requires the consistent and forceful leadership of the overall school community (and the larger community). Prejudice is learned – and as research shows it can be unlearned – but to do so requires rigorous work and the active engagement of school leaders at every level.

---

<sup>14</sup> “‘Trusting’ Student School Community Linked to Student Gains,” by Catherine Gewertz, from *Education Week*, October 16, 2002.

### **Anti-Bias Resources for Schools and the Community**

#### **The ADL's A WORLD OF DIFFERENCE Institute®**

ADL's A WORLD OF DIFFERENCE® Institute is a leading provider of anti-bias and diversity education training programs and resources used by schools, universities, corporations, community organizations and law enforcement agencies throughout the United States and abroad. Programs for families and caregivers of children aged three to five years old help children develop positive attitudes about themselves and others before stereotypes and prejudice can take root. Programs for administrators, teachers and students in grades K – 12 foster safe, respectful and inclusive learning environments for all. University, corporate, civic leadership, and law enforcement trainings for adults ensure that ADL's message reaches the workplace and community.

The League's long commitment to fighting anti-Semitism and all forms of bigotry serves as the basis for its extensive range of anti-bias initiatives. The ADL's A WORLD OF DIFFERENCE® Institute is a market leader in the development and delivery of diversity education resources and anti-bias training. Customized to meet the different needs of a range of audiences, programs are available to schools, universities, corporations, community-based organizations, and law enforcement agencies throughout the United States and abroad.

Since its inception in 1985, the A WORLD OF DIFFERENCE® Institute has trained approximately 420,000 K-12 educators in the United States and, through them, has reached an estimated 38 million students with these critical messages of respect, understanding, and responsible citizenship.

#### **Peer Training Initiatives**

A 2002 study by the Families and Work Institute and The Colorado Trust reports that over a one month period 66 percent of young people were targets of teasing and gossip and 32 percent were bullied. The report recommends that schools promote civility and respect for differences as the first and vital step to combat problems of hatred, bigotry and discrimination. Without such intervention, bias and stereotyping can lead to violence. Mentoring programs were also cited as ways to counteract these behaviors. One student interviewed in the study said that teachers, parents and administrators should "help students understand that we are all different and should be treated equally" (Galinsky, Salmond 2002).

Following the riots in Crown Heights, Brooklyn in 1991, ADL's A WORLD OF DIFFERENCE® Institute staff began working with a group of students from Clara Barton High School in Crown Heights. The motivation of this group of young people



to take action against prejudice resulted in the creation of ADL's A WORLD OF DIFFERENCE® Institute Peer Training Program.

Today, the A WORLD OF DIFFERENCE Institute Peer Training Program is an international program operating in 15 countries overseas and at regional offices of the Anti-Defamation League across the United States. Over 8,000 young people have been trained as A WORLD OF DIFFERENCE® Institute Peer Trainers since the program's inception in 1991, impacting tens of thousands of other young people in their schools and communities.

A WORLD OF DIFFERENCE® Institute Peer Trainers assume leadership roles in creating respectful and inclusive schools and communities. Peer Trainers learn how to effectively respond when they hear racial slurs, name-calling, and put-downs in the hallways, lunchrooms, and classrooms of their schools. They also develop the skills to lead interactive discussions and workshops for their peers and younger students that promote an environment that is respectful and civil.

#### **Partners Against Hate**

The anti-bias education and outreach initiative, Partners Against Hate, is a collaboration of the Anti-Defamation League (ADL), the Leadership Conference on Civil Rights (LCCR), and the Center for the Prevention of Hate Violence (CPHV). The initiative features a comprehensive and innovative approach of outreach, education, and training. The project received a three-year grant from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, and the U.S. Department of Education, Safe and Drug-Free Schools Program.

The Partners Against Hate Web site, [www.partnersagainsthate.org](http://www.partnersagainsthate.org), is an important outreach and resource tool for youth, parents, teachers, criminal justice and youth-service professionals, librarians, and law enforcement officials. The Web site now provides the most comprehensive hate crime-related information, resources and counteraction tools – with access to online training and technical assistance addressing bias-motivated behavior. In addition, the Web site includes access to an extensive database of hate crime laws that form the basis of criminal enforcement in the 50 states, with links to the laws searchable by state and cross-referenced by categories, including penalty enhancement, data collection, and law enforcement training statutes.

**ADL Online Educational Resources to Address Prejudice and Hate**

*What Did You Just Say? Challenging Biased Language @*  
[http://www.adl.org/education/bias\\_language/](http://www.adl.org/education/bias_language/)

➤ Posted in response to Don Imus (Released April 2007)

*Words that Heal: Using Children's Literature to Address Bullying @*  
[http://www.adl.org/education/curriculum\\_connections/winter\\_2005/](http://www.adl.org/education/curriculum_connections/winter_2005/)

➤ Curriculum lessons for elementary school students (Winter 2005)

*Responding to Bias in the Aftermath of Hate @*  
[http://www.adl.org/education/responding\\_bias\\_language/](http://www.adl.org/education/responding_bias_language/)

➤ Posted in response to VA Tech Shooting (April 2007)

Other Recent Educational Resources

➤ *Trickery, Trolling and Threats: Understanding and Addressing Cyberbullying*  
<http://www.adl.org/education/cyberbullying/>

On-line resources + Workshops Training (August 2007)

➤ *Fifty Years After Little Rock: Successes and Setbacks @*  
[http://www.adl.org/education/little\\_rock/](http://www.adl.org/education/little_rock/)

Online resources and curriculum connections re: 2006 Supreme Court ruling @  
[http://www.adl.org/education/curriculum\\_connections/little\\_rock/default.asp](http://www.adl.org/education/curriculum_connections/little_rock/default.asp)  
 (Released September 2007)

Educator and Student-Based Programs

➤ A CAMPUS OF DIFFERENCE Program@  
[www.adl.org/education/edu\\_awod/awod\\_campus.asp](http://www.adl.org/education/edu_awod/awod_campus.asp)

➤ A CLASSROOM OF DIFFERENCE Program @  
[www.adl.org/education/edu\\_awod/awod\\_classroom.asp](http://www.adl.org/education/edu_awod/awod_classroom.asp)

➤ Peer Training Program (middle and high school) @  
[http://www.adl.org/awod\\_new/awod\\_peer\\_descr.asp](http://www.adl.org/awod_new/awod_peer_descr.asp)

➤ Becoming An Ally: Interrupting Name-calling and Bullying (middle and high school)

➤ Names Can Really Hurt Us Assembly Program (high school) @  
[http://www.adl.org/education/edu\\_awod/awod\\_pilot.asp](http://www.adl.org/education/edu_awod/awod_pilot.asp)

➤ Hate Comes Home CD-ROM @  
[http://www.adl.org/education/hate\\_comes\\_home2.asp](http://www.adl.org/education/hate_comes_home2.asp)

**Selected Resources on Hate Crime Response and Counteraction**

**Anti-Defamation League**

*How to Combat Bias and Hate Crimes: An ADL Blueprint for Action*  
[http://www.adl.org/combating\\_hate/blueprint.asp](http://www.adl.org/combating_hate/blueprint.asp)

*Hate Crime Laws*, <http://www.adl.org/99hatecrime/intro.asp>

**FBI**

*Hate Crime Data Collection Guidelines* <http://www.fbi.gov/ucr/hatecrime.pdf>

*Hate Crime Statistics, 2005* <http://www.fbi.gov/ucr/hc2005/index.html>

*Training Guide for Hate Crime Data Collection*  
<http://www.fbi.gov/ucr/trainqd99.pdf>

**Department of Education**

*Preventing Youth Hate Crime*, <http://www.ed.gov/pubs/HateCrime/start.html>

**Department of Education/National Association of Attorneys General**

*Protecting Students from Harassment and Hate Crime*,  
<http://www.ed.gov/offices/OCR/archives/Harassment/harassment.pdf>

**Department of Justice**

*Addressing Hate Crimes: Six Initiatives That Are Enhancing the Efforts of Criminal Justice Practitioner*, <http://www.ncjrs.gov/pdffiles1/bja/179559.pdf>

*Hate Crime Training: Core Curriculum for Patrol Officers, Detectives, and Command Officers* <http://www.usdoj.gov/crs/pubs/hct.pdf>

*A Policymaker's Guide to Hate Crimes*,  
<http://www.ncjrs.gov/pdffiles1/bja/162304.pdf>

**International Association of Chiefs of Police**

*Hate Crime in America Summit Recommendations*  
[http://www.theiacp.org/documents/index.cfm?fuseaction=document&document\\_id=160](http://www.theiacp.org/documents/index.cfm?fuseaction=document&document_id=160)

*Responding to Hate Crimes: A Police Officer's Guide to Investigation and Prevention*,  
[http://www.theiacp.org/documents/index.cfm?fuseaction=document&document\\_id=141](http://www.theiacp.org/documents/index.cfm?fuseaction=document&document_id=141)

**Leadership Conference on Civil Rights**

*Cause for Concern: Hate Crimes in America, 2004*

[http://www.civilrights.org/publications/reports/cause\\_for\\_concern\\_2004/](http://www.civilrights.org/publications/reports/cause_for_concern_2004/)

**National Criminal Justice Reference Service**

[http://www.ncjrs.org/spotlight/hate\\_crimes/publications.html](http://www.ncjrs.org/spotlight/hate_crimes/publications.html)

**National District Attorneys Association**

*A Local Prosecutor's Guide for Responding to Hate Crimes*

[http://www.ndaa.org/publications/apri/hate\\_crimes.html](http://www.ndaa.org/publications/apri/hate_crimes.html)

**Organization of Chinese Americans**

*Responding to Hate Crimes: A Community Action Guide, 2<sup>nd</sup> Edition*

<http://www.ocanational.org/images/stories/docscenter/ocahatecrime2006.pdf>

**Partners Against Hate**

*Building Community and Combating Hate: Lessons for the Middle School Classroom*

[http://www.partnersagainsthate.org/educators/middle\\_school\\_lesson\\_plans.pdf](http://www.partnersagainsthate.org/educators/middle_school_lesson_plans.pdf)

*Hate on the Internet: A Response Guide for Educators and Families*

[http://www.partnersagainsthate.org/publications/hoi\\_full.pdf](http://www.partnersagainsthate.org/publications/hoi_full.pdf)

*Investigating Hate Crimes on the Internet*

[http://www.partnersagainsthate.org/publications/investigating\\_hc.pdf](http://www.partnersagainsthate.org/publications/investigating_hc.pdf)

*Peer Leadership: Helping Youth Become Change Agents in Their Schools and Communities*

[http://www.partnersagainsthate.org/publications/Peer\\_Leadership\\_Guide.pdf](http://www.partnersagainsthate.org/publications/Peer_Leadership_Guide.pdf)

*Program Activity Guide: Helping Children Resist Bias and Hate, Elementary School Edition*

<http://www.partnersagainsthate.org/publications/pahprgguide302.pdf>

*Program Activity Guide: Helping Youth Resist Bias and Hate, Middle School Edition*

[http://www.partnersagainsthate.org/educators/pag\\_2\\_ed.pdf](http://www.partnersagainsthate.org/educators/pag_2_ed.pdf)

**West Virginia University -- USHateCrimes.com**

<http://www.ushatecrimes.com/>

**Selected ADL Resources on Extremism and Organized Hate Groups in America**

Racist Skinhead Project

[http://www.adl.org/racist\\_skinheads/](http://www.adl.org/racist_skinheads/)

Extremism in America

[http://www.adl.org/learn/ext\\_us/](http://www.adl.org/learn/ext_us/)

Dangerous Convictions: Extremist Recruitment in America's Prisons

[http://www.adl.org/learn/Ext\\_Terr/dangerous\\_convictions.asp](http://www.adl.org/learn/Ext_Terr/dangerous_convictions.asp)

Extremists Declare 'Open Season' on Immigrants: Hispanics Target of Incitement and Violence

[http://www.adl.org/main\\_Extremism/immigration\\_extremists.htm](http://www.adl.org/main_Extremism/immigration_extremists.htm)

Hate On Display: A Visual Database of Extremist Symbols, Logos and Tattoos

[http://www.adl.org/hate\\_symbols/default.asp?LEARN\\_Cat=Hate\\_Crimes&LEARN\\_SubCat=HSD](http://www.adl.org/hate_symbols/default.asp?LEARN_Cat=Hate_Crimes&LEARN_SubCat=HSD)

The Ku Klux Klan Today

[http://www.adl.org/learn/ext\\_us/klk/klan\\_report.pdf](http://www.adl.org/learn/ext_us/klk/klan_report.pdf)

Jihad Online: Islamic Terrorists and the Internet

[http://www.adl.org/internet/ijihad\\_online.pdf](http://www.adl.org/internet/ijihad_online.pdf)

Public Enemy Number 1: California's Growing Racist Gang

[http://www.adl.org/main\\_Extremism/peni\\_california\\_racist\\_gang.htm](http://www.adl.org/main_Extremism/peni_california_racist_gang.htm)

POST-HEARING QUESTIONS\* SUBMITTED BY THE HONORABLE LAMAR SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, COMMITTEE ON THE JUDICIARY

**QUESTIONS FOR THE RECORD**  
**Committee on the Judiciary Hearing on:**  
**“Jena 6 and the Role of Federal Intervention in Hate Crimes**  
**and Race-Related Violence in Public Schools”**

*Submitted by Ranking Republican Member Lamar Smith*

For Mr. Sharpton and Mr. Moran:

1. You have asked the federal government to intervene in the case of Mychal Bell. As you know, Mr. Bell was recently released from custody on the juvenile delinquency action involving Mr. Bell’s alleged December 4, 2006, assault on Justin Barker. However, Mr. Bell is now serving a sentence in a juvenile detention facility for violating the terms of his probation on a previous, unrelated juvenile delinquency action.
  - a. Please describe the factors that you believe a Louisiana state court is required to consider in determining whether or not to detain an individual, and whether or not to revoke an individual’s probation.
  - b. Please describe the source of any authority you believe the Department has to intervene in Mr. Bell’s ongoing state case.
2. What constitutional or statutory authority do you believe gives the federal government authority to release Mychal Bell from state incarceration? For any authority identified, please describe all facts, and their sources, which would satisfy the authority which you identify that would permit the federal government to force the state to release Mychal Bell.

For Mr. Sharpton and Mr. Ogletree:

3. Much of the criticism associated with the prosecution of the Jena 6 has centered on the treatment of Mychal Bell by state authorities. However, five other people were also charged in the beating of Justin Barker.
  - a. Please provide your understanding of the ages of those other individuals; the charges against them; and whether they are charged as juveniles or adults.
  - b. Are you aware that four of the defendants were 17 years old, and therefore were adults under Louisiana law?
  - c. Are you aware that one of the two juveniles was charged as a juvenile and not transferred to adult court?
  - d. If the local prosecutor properly charged the 17 year old defendants as adults and properly charged on juvenile as a juvenile, please explain how you believe the race of the defendants played a role in the charging process.

For Mr. Cohen, Mr. Ogletree, and Mr. Sharpton:

---

\*The Committee had not received a response to these questions prior to the printing of this hearing.

4. Department of Justice officials testified that the three juveniles who are accused of hanging nooses in a tree at Jena High School were not prosecuted federally. The Justice Department officials explained the decision by referring to general principles of federal prosecution that differ for juveniles and adults. According to the testimony, these principles result in the Department sometimes declining to prosecute juveniles when, as in this case, there were non-criminal sanctions imposed upon the juveniles. The media has reported to that school officials imposed punishment against the juveniles that included nine days at an alternative school; two weeks of in-school suspension; two Saturday detentions; attendance at a discipline court; and referral for counseling.
  - a. Do you agree that the federal government does not prosecute every juvenile whose conduct would have violated federal law if committed by an adult?
  - b. Do you agree that the federal government, in determining whether to pursue federal charges against a juvenile, must consider such factors as: the age of the juvenile; the prior record of the juvenile; any prior efforts at rehabilitation; the possibility of rehabilitation through non-criminal means; and any non-criminal action taken in response to the conduct; the severity of the offense, including any bodily injury caused?
  - c. If you agree with those factors, please describe any factors that you believe would cause the Department to pursue a federal juvenile action in this case.

For Mr. Ogletree:

5. You have offered your opinion that the Department could have pursued charges under 18 U.S.C. ss. 1983 and 1985. Do you agree that both of these statutes create a private civil rights cause of action and are not criminal statutes? Do you also agree that the Department has no role to play in enforcing these statutes?

For Mr. Sharpton, Mr. Moran, Mr. Ogletree, and Mr. Cohen:

6. The October 24, 2007, edition of the Christian Science Monitor published an article, "Media myths about the Jena 6 case: A local journalist tells the story you haven't heard" in which the author makes a number of assertions including that students of all races sat underneath the tree described as the "whites-only" tree and that the nooses that were hung were aimed at the offending students' white friends. For your convenience a copy of this article is attached. We would very much like to learn of your thoughts on these points. Please respond to each of the twelve myths asserted in that article.

7. Given your objections to the charges brought against Mychal Bell what crime do you believe Bell should be charged with as a result of the December 4, 2006, attack in Justin Barker if not the ones brought by the prosecutor?

